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DISCLAIMER

The State Bar of California does not approve or endorse any particular agency, organization, program, individual or practice listed in the California Handbook for Disaster Legal Services and reserves the right to take appropriate action against any attorney or entity which violates the California Rules of Professional Conduct or other applicable authorities. The purpose of this publication is to offer information collected from a range of advocates about providing legal assistance to disaster victims in California. This information may be especially helpful to bar associations, legal services programs, pro bono programs and State Bar-certified lawyer referral services that are interested in developing a disaster legal services plan and responding to the legal needs of disaster victims.

The Office of Legal Services attempted to verify the accuracy of all information herein at the time of printing; however, the information may have changed since then. Any omissions or oversights are unintentional and inadvertent.

Points of view or opinions expressed in this document are those of the authors. These have not been adopted or endorsed by the State Bar's Board of Governors and do not constitute the official position or policy of the State Bar of California.

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1 HOW TO USE THIS PUBLICATION

The California Handbook for Disaster Legal Services (Handbook) is a compilation of the collective experience and wisdom gained from those in the legal services community who have been actively involved in disaster response since the Loma Prieta earthquake in October 1989. It is a very comprehensive resource but by no means an exhaustive review of disaster legal services. The many commonalities that can be found in each disaster form the foundation of this publication.

At first glance, the information in the Handbook may appear detailed and somewhat complex, especially if the first time the reader is using the Handbook is immediately following a disaster. Every attempt has been made to make the Handbook user-friendly. The information is presented in a sequential fashion with cross-references to related sections and is accompanied by visual aids where appropriate. The primary objective of the Handbook is to assist the legal community in providing a very valuable service that will make a difference in the lives of disaster victims.

The Handbook was designed to be used by: Leaders of local bar associations and young lawyers associations/barrister groups; members of the private bar; and the staff of local bar associations, legal services programs, pro bono programs and State Bar-certified lawyer referral services. Each has an important role in disaster planning and response efforts. After a disaster strikes, this Handbook will be especially useful in the development of an organized effort to provide legal assistance to individual disaster victims. The Handbook can be used by the legal community in the following ways:

1. Organizing a disaster committee and developing a disaster legal services response plan in advance of a disaster;
2. Training a core group of volunteer attorneys before a disaster strikes who will train and supervise other volunteers recruited immediately after a disaster; and
3. Assisting a neighboring or distant county where resources have been overwhelmed in response to a disaster.

The Handbook is divided into three main areas. Sections 2-4 provide information on how to develop a disaster legal services plan in advance of a disaster and how to implement the plan after disaster strikes. Sections 5-12 are devoted to describing government assistance programs available to help disaster victims. Of particular note is Section 6 which serves as a map to assisting individuals with disaster-related legal needs and should be reviewed by all advocates prior to advising disaster victims. All advocates should also review the charts in Section 6: "Chronology of FEMA, SBA, and IFGP Applicants," is a helpful visual aid summarizing the interrelationship between the primary federal disaster assistance programs; "Overview of FEMA Disaster Individual Assistance Programs Available for Renters and Homeowners" and "Overview of Non-FEMA Disaster Individual Assistance Programs Available for Renters and Homeowners" provide convenient references to the various disaster assistance programs described in more detail in the Handbook. Sections 13A-13G provide legal summaries of significant disaster-related areas of law.

Local legal communities are strongly encouraged to "localize" the content of this publication as appropriate so that the information better meets the needs of the affected community (e.g., local rent ordinance supersedes state specific landlord/tenant information). Also, to make the Handbook optimally useful, insert local telephone numbers and addresses as appropriate. See Appendix A. Please note that portions of the Handbook will change with each disaster so it is crucial to update the contents. In particular, all legal authorities cited and sample materials and forms located in the appendices should be reviewed for currency.

Legal communities outside California will also find this publication to be a valuable resource. California specific information found in this publication should be replaced with information of the particular state, especially with respect to the list of "Important Telephone Numbers and Websites" found at Appendix A.
Note that there is a Table of Acronyms at Appendix C to aid in remembering the various acronyms referenced throughout the Handbook.

An order form for the Handbook can be found at Appendix I. The Handbook is also available on diskette (WordPerfect 5.1) upon request. Your comments about the Handbook and suggestions on how to improve the publication would be greatly appreciated. Please complete and return the evaluation form at Appendix J.

To learn more about developing a local disaster legal services response effort, or for more information about the State Bar of California's role in statewide disaster coordination, please note the following State Bar contacts:

**Young lawyers associations or barrister groups** call Theresa Raglen, California Young Lawyers Association Staff Administrator, Office of Bar Relations, at 415-561-8219;

**Local, specialty, minority, women's bar associations and State Bar-certified lawyer referral services** call Ann Wassam, Deputy Director, Office of Bar Relations, at 415-561-8240;

**Legal services programs, pro bono programs and legal services support centers** call Sharon Ngim, Pro Bono Program Developer, Office of Legal services, at 1-800-628-4858 or 415-561-8267.
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2 DISASTER LEGAL SERVICES OVERVIEW

I. INTRODUCTION

In October 1989, millions watching the World Series witnessed the Loma Prieta Earthquake as it struck Northern California. Since then, there have been 16 federally-declared and numerous state disasters in California. Disasters kill and injure people. Structures collapse. Businesses close. Workers lose jobs. California has experienced earthquakes, fires, floods, freezes, mudslides and civil disturbances which have devastated communities with people from all income levels. The Northridge Earthquake shook Southern California on the pre-dawn of January 17, 1994. It killed 52 persons and destroyed $20 billion in property. It was the largest single disaster in United States history to date.

The frequency and scale of disasters in California rivals legends. The following is a list of federally-declared California disasters since 1989.

- 1989 Loma Prieta Earthquake
- 1990 Southern California Fires
- 1991 Central Valley Freeze
  - East Bay Hills Firestorm
- 1992 Southern California Floods
  - Los Angeles Civil Disturbances
  - Humboldt Earthquake
  - Big Bear Earthquake
  - Calaveras/Shasta Fires
- 1993 California Floods
- 1994 Southern California Fires
- 1994 Northridge Earthquake
- 1995 Salmon Fisheries Decline
- 1995 Winter Storms
  - Late Winter Storms
- 1996 Southern California Fires
- 1996 Central and Northern California Floods
- 1997 Southern California Fires
- 1997 Central and Northern California Floods

Each disaster wreaks unique damage on its victims. Yet, all share many commonalities. Survivors of any disaster need to:

A. Protect their shelter and housing rights;
B. Reestablish lost income and protect employment rights;
C. Gain access to federal and state disaster assistance; and
D. Maximize any private insurance.

To meet these needs many survivors require immediate legal information and advice to access federal programs that provide temporary relief to those faced with a loss of shelter, employment and other damage. Legal rights also need to be preserved. The timely delivery of legal services is a crucial component of disaster relief.

II. FEDERAL AND STATE EFFORTS

Information provided by Jaime Arteaga, Public Information Officer, Information and Public Affairs, Governor's Office of Emergency Services.
A. Federal Emergency Management Agency

The Federal Emergency Management Agency (FEMA) is the federal government agency charged with coordinating disaster response, emergency planning, preparedness, mitigation and recovery through administration of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. § 5121 et seq. FEMA and the Stafford Act are activated when the President declares a federal disaster area at the request of the state's governor. FEMA then designates the county or counties eligible to receive assistance. The Stafford Act outlines the types of federal disaster assistance available to individuals and public entities. FEMA's national office is located in Washington, D.C. and operates 10 regional offices. Region IX includes California and is located in San Francisco (415-923-7100). (See Appendix A for useful telephone numbers after a disaster strikes; Appendix F for a list of the FEMA regional offices; Appendix G for a map of the FEMA regions.)

Disaster victims can apply to various disaster programs for individual assistance through a toll-free teleregistration or in person at a local Disaster Application Center (DAC), if applicable. FEMA may provide temporary assistance to individuals who have lost housing, income or property. It also provides crisis counseling and legal services.

FEMA also assists local governments and certain private non-profit organizations to restore public services including buildings, roads and other damaged infrastructure; in addition, it provides hazard mitigation assistance. This handbook will concentrate only on certain types of disaster assistance to individuals. FEMA is described in more detail in Sections 5, 6 and 7.

B. California Office of Emergency Services

The Governor's Office of Emergency Services (OES) is the California equivalent of FEMA and is based in Sacramento (916-262-1843). There are regional offices in California (see Appendix A, Important Telephone Numbers and Websites). OES administers the state's response to disasters and coordinates closely with FEMA after a presidential declaration of disaster. In general, it works with state and local governments to deal with public works and hazard mitigation projects.

III. Provision of Disaster Legal Services

A. Authorization for and Definition of Legal Services

As discussed earlier, the Stafford Act authorizes the provision of free legal services to low-income and other qualifying disaster victims. The Act defines legal services to include legal counseling and advice, referral to appropriate sources of disaster assistance, representation in non-fee-generating cases and, at the discretion of the FEMA Regional Director, referrals to other appropriate sources of legal aid. Appropriate legal services include:

1. Volunteer attorney staffing at local Disaster Application or Recovery Centers, if applicable;
2. Hotline telephone assistance and referrals;
3. Voluntary lawyer services for individual cases; and
4. Referrals to State Bar-certified lawyer referral services.

Examples of the most common legal issues that arise following a disaster include:

1. Tenants' rights and other housing matters;
2. Consumer protection matters;
3. Problems with insurance claims; and
4. Replacement of legal and other documents; and
5. Administrative appeals for denial of disaster assistance.
B. Agreement between FEMA and the American Bar Association Young Lawyers Division To Provide Legal Services Nationwide

Recognizing the critical need for immediate access to legal assistance for disaster survivors, FEMA entered into an agreement with the American Bar Association Young Lawyers Division (ABA YLD) in 1980 to establish the Disaster Legal Services Program. ABA YLD agrees to mobilize local attorneys to provide volunteer legal services to disaster victims when requested by the FEMA Regional Director. The original agreement was amended in July 1993 and a copy can be found at Appendix B. Depending on the capacity of the private bar in the disaster region, the ABA YLD may associate with the State Bar and/or local bar associations and their young lawyers or barristers sections to organize and provide disaster legal services.

As of the printing date of this publication, ABA YLD is in the process of reaching an agreement with the National Transportation Safety Board (NTSB) for the provision of legal information to families of passengers involved in aircraft accidents and monitoring unsolicited communications. These services would be provided under the Aviation Disaster Family Assistance Act of 1996 (Public Law No. 104-264, Title VII, October 9, 1996). For more information about the status of the agreement with NTSB, contact the ABA YLD at (312) 988-5608.

C. ABA YLD Disaster Response Structure

The ABA YLD has a Disaster Legal Services Committee that is responsible for performing YLD obligations under the agreement with FEMA. The committee includes a national Disaster Assistance Chair who is elected annually, and District Representatives throughout the country who are grouped in regions to closely approximate FEMA's. The Chair is the primary communication link between FEMA and local ABA YLD District Representatives. Pursuant to the agreement with FEMA, District Representatives are responsible for organizing and coordinating disaster legal services at the local level. They serve two-year terms and represent different geographic areas of the country. California has two representatives, one in Northern California and one in Southern California. To obtain the name of the current representatives, contact the staff administrator for California Young Lawyers Association at the State Bar of California at 415-561-8219.

D. The State Bar of California: LAW-HELP-CALIFORNIA

Staff from the Offices of Bar Relations and Legal Services at the State Bar of California help facilitate the provision of local disaster legal services in the State. The State Bar's disaster efforts are known as LAW-HELP-CALIFORNIA and services include:

1. **Fax network** providing up-to-date information about where survivors can apply for federal and state disaster assistance, training events for volunteer attorneys and various local legal services efforts that assist disaster victims;

2. **Facilitation and coordination of meetings and conference calls** of representatives from local bar associations and legal services providers to help coordinate their activities and services and to help prevent duplication of efforts; and

3. **Development and distribution of resource and training materials** to train volunteer attorneys and legal services advocates.

The State Bar also coordinates closely with the ABA YLD District Representatives to ensure that legal services reach disaster victims. Since 1989, the State Bar has assumed a significant coordination role working directly with local bar associations, young lawyers associations, legal services programs, pro bono programs and State Bar-certified lawyer referral services and providing technical assistance for disaster response. Following the 1995 floods which affected every county, the State Bar developed an MCLE training specific to floods that was videotaped
and sent to local lead agencies to train core groups of volunteers. The State Bar also set up and staffed a statewide toll-free hotline in cooperation with ABA YLD and FEMA. Staffers took brief intake information from callers and faxed intake forms to appropriate lead agencies for follow up by local volunteer attorneys.

E. Legal Services Providers

In addition to bar associations and their young lawyers sections, legal services providers in the affected area are often the greatest source of legal expertise and services following a disaster. This is especially true if a disaster affects large numbers of low-income people.

Local bar associations and volunteers have different areas of expertise from local legal services programs. One path to effective delivery of disaster legal services is for the participating groups to divide responsibility among themselves (e.g., the local legal services program agrees to help with public benefits issues while the bar association's insurance experts address private insurance questions). More information about pre-disaster planning and post-disaster response follows. See chart that summarizes the provision of legal services at the end of this section.
Legal Services for Disaster Survivors

Disaster Incident

Presidential Declaration of Disaster

FEMA Authorizes Provision of Legal Services in Region IX

State Bar of California Response
Board of Governors
California Young Lawyers Association
LAW-HELP-CALIFORNIA Task Force

American Bar Assn. Young Lawyers Division (ABA YLD)

Office of Bar Relations
Office of Legal Services
Office of Chief Trial Counsel
Office of Communications

Complaints Against Attorneys
Media Contacts

Local Bar Assn. Young Lawyers Assns. Lawyer Referral Services

Legal Services Programs Pro Bono Programs

Impact litigation, longterm recovery

Legal information advice and referral to disaster victims at DACs, DRCs, workshops, or by telephone

Legal representation to individual disaster victims, advocacy for appeals
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3 PRE-DISASTER PLANNING

OVERVIEW

In the absence of a disaster, finding the motivation to prepare for a hypothetical event is difficult. Yet, in the midst of a disaster, the disruption makes organizing even more onerous. Local bars are encouraged to take a leadership role by making some preparatory steps to develop a disaster legal services response plan in coordination with other key participants in the legal community before the need actually arises. Local bars might consider institutionalizing disaster planning into bar activities by forming a standing committee on disaster legal assistance.

I. OBTAIN RESOURCE AND TRAINING MATERIALS

The California Handbook for Disaster Legal Services (Handbook) provides a summary of disaster assistance programs, as well as legal issues which confront survivors. The availability of relevant and updated training materials for volunteers is essential to getting legal services to disaster victims. In addition to the Handbook, several bar associations and legal services organizations both in California and in other disaster-ridden states have produced nationally recognized materials for use after disasters. A list of those publications can be found in the State Bar's list of titles from the Disaster Legal Services Library. See Appendix D. The materials are available through the Office of Legal Services.

II. INSTITUTIONALIZE DISASTER PLANNING AT THE LOCAL BAR

A. Formation of a Disaster Committee

Local bar associations in conjunction with their young lawyers or barristers section are encouraged to take the lead in disaster coordination. In most circumstances, a standing committee of the bar association will be of great assistance in both pre-disaster planning and post-disaster services. This is especially true for large urban bar associations. All bar associations should designate staff and/or volunteers to coordinate disaster assistance.

B. Committee Membership

In addition to the bar association and young lawyers/barristers section, the following entities should be represented on the committee because each has an important role in a disaster legal services response:

1. Minority, specialty and women's bar associations;
2. Legal services and pro bono programs;
3. State Bar-certified lawyer referral services;
4. Large law firms;
5. Law schools; and
6. Other entities that provide important linkages during a disaster.

From within the committee, a disaster volunteer coordinator should be selected. This position is key to a successful response. No matter how committed the members of a bar association may be in reacting to a disaster, coordination and knowledge of the disaster assistance system is crucial to ensuring an effective response. Please notify the State Bar of California Office of Bar Relations about formation of a committee and the name of the chair/contact person.
C. Developing a Disaster Legal Services Response Plan

Having a written disaster response plan before disaster strikes is highly recommended. Given the frantic and chaotic state created by a disaster, advanced planning is crucial. Ideally, the plan should include the following:

1. Reference to the city or county disaster preparedness plan and how the legal services effort fits into that plan;
2. Current committee membership information which is updated as needed with the following:
   a. Addresses -- Home, office and e-mail;
   b. Phone numbers -- Home, office and cellular;
   c. Fax number; and
   d. Name, address and phone number of relative or close friend;
3. Selection of a disaster meeting site and alternate site(s) where the committee will convene immediately following a disaster and that can serve as headquarters;
4. Methods of communicating within and outside of the legal community after disaster strikes;
5. Availability of equipment and resources -- Identify valuable resources available in the community, especially from large law firms, such as:
   a. Laptop computers, modems, online networks;
   b. Language/translation resources;
   c. Support staff and attorneys who can be "loaned" on a part- or full-time basis;
   d. Conference rooms or other meeting space;
   e. Photocopiers and Fax machines;
   f. Telephone banks for volunteers; and
   g. Videotaping equipment and facilities;
6. Core group of expert volunteer attorneys who can provide the first level of legal assistance (See "Prepare Framework for Disaster Legal Assistance" below);
7. Plans for recruitment and training of additional volunteers (See Section 4);
8. Arrangements for malpractice coverage (See Section 4);
9. Methods of delivering legal services with sensitivity to needs of special populations (See Section 4);
10. Designation of spokesperson who can handle media-related matters and be a liaison to the State Bar's statewide coordination efforts; and
11. Local referral and resource list (See Appendix A for telephone numbers).

The plan needs to be updated periodically and circulated to the committee members. Also, send a copy of the plan to the State Bar of California Office of Bar Relations. Be sure to have updated backup copies of the plan with accompanying resource materials in several secure places. A sample plan can be found at Appendix L.

It should be noted that preparing a disaster plan to respond to the legal needs of disaster victims is distinguished from developing an emergency preparedness plan. Information on preparing a law office for disaster can be found at Appendix D, under "Law Practice Management".
III. PREPARE FRAMEWORK FOR DISASTER LEGAL ASSISTANCE

The disaster legal services plan will help lay the groundwork for providing legal services after disaster strikes. Changes to the plan will be determined by the nature and scope of the disaster. See Section 4.

A. Anticipating Levels of Immediate Volunteer Attorney Participation

1. Disaster Application Centers and Teleregistration

In disasters that occurred before 1995, FEMA frequently set up Disaster Application Centers (DACs), where disaster victims would apply for FEMA and other government disaster assistance programs or gather information about other types of assistance. Volunteer lawyers would be stationed at the DACs to provide legal assistance. FEMA now relies principally on teleregistration and DACs are implemented as a last resort for in-person registration only if teleregistration is impossible or impractical.

2. Disaster Recovery Centers

FEMA in conjunction with OES may establish Disaster Recovery Centers (DRCs) in disaster areas to provide information to disaster victims who have already submitted an application through teleregistration. Representatives from FEMA, OES, other federal, state, and local government agencies and volunteer agencies may be available to provide information and assistance, including volunteer attorneys from local legal services providers who can provide legal assistance.

3. Hotlines

Disaster hotlines are usually the first level of disaster legal services, where volunteer attorneys provide brief information, advice and referral. If DACs or DRCs are established, hotlines may coexist with legal assistance provided on site or stand alone. The second level of legal assistance is direct representation of disaster victims who require more in-depth assistance from an attorney or, alternatively, pro per advice. Representation or pro per assistance may also be needed for appealing of FEMA (or other governmental agency) decisions or to assist with recertification for continued assistance. These services can be coordinated in cooperation with existing State Bar-certified lawyer referral services and local legal services providers.

More detailed information about hotlines and different stages of volunteer participation can be found in Section 4.

B. Recruitment and Training of Core Group of Volunteer Attorneys

Preliminary plans for volunteer recruitment and utilization can be set forth in preparation for a disaster and implemented after disaster strikes. See Section 4. Consider recruiting attorneys from practice areas described in Section 13. Other attorneys can be trained in government disaster assistance programs described in Sections 7-12. Ideally, this core group of attorneys can provide direct legal assistance at the DACs, DRCs, or on the hotline, serve as trainers and mentors for attorneys newly recruited after a disaster and review the intake procedures and quality of legal services provided. For more information about developing recruitment efforts, see Page 1-2 for State Bar contacts. Samples can be found at Appendix L. More information on training can be found in Section 4. Also note that with appropriate attorney supervision, law students and paralegals are good sources of volunteers for purposes of intake, research and writing, etc.
C. Coordination with Legal Services Providers

It is very important to coordinate planning efforts with the federally-funded legal services program, pro bono programs, State Bar-certified lawyer referral services and other independent legal services programs in the community. Each organization will play a key role in the delivery of legal services to disaster victims, depending on a number of considerations such as the areas of expertise, availability of staff and volunteer resources, restrictions on service delivery based on income, immigration status and/or geographic requirements. Coordination of efforts early on will maximize resources, prevent duplication of efforts and ultimately better serve disaster victims.

D. Limitations on Federally Funded Legal Services Programs

In 1996, Congress imposed certain restrictions on the services that LSC-funded programs can provide. For more information about LSC restrictions, contact the Public Interest Clearinghouse at 415-255-1714 or the Center for Law and Social Policy (CLASP) at 202-328-5140.

IV. ANTICIPATE THE NEEDS OF SPECIAL POPULATIONS

Planning efforts need to take into consideration the needs of sectors of the community which may face unique problems.

A. Non-English Speakers and Cultural Issues

While there are a number of barriers to accessing services, language barriers are the most common. No amount of preparation or level of training will compensate in situations where volunteers cannot communicate with survivors. Cultural values may also keep survivors from exercising their legal rights.

Disaster planning should take into consideration the language and cultural diversity in the community. The most effective manner of accomplishing this task is building relationships with local ethnic or minority bar associations that have members with relevant language skills and cultural knowledge. If bilingual and bicultural attorneys are not available for a language or ethnic group, it is important to know which local social service providers have needed language skills and cultural sensitivity among their staffs or volunteers. Churches, family associations and other community-based organizations also provide essential linkages during a disaster. Many materials are available in languages other than English. Others may need to be translated. See Section 13E.

B. Disabled Persons

Many persons with particular disabilities alter their homes or vehicles to compensate for their disabilities. When a disaster destroys these homes or vehicles, the owners face complex problems in replacing them. Even temporary shelter can be a problem. If FEMA establishes DACs or DRCs, disabled persons may experience difficulties going to the sites, or the sites may be inaccessible. When FEMA establishes teleregistration lines, FEMA sets up TDD lines. (TDD lines assist people who are hearing impaired.) There may be no sign interpreter present when a deaf person comes to a site. Establishing cooperative relationships with groups that deal with the sight or hearing impaired can assist a local bar association in reaching these persons. Each community has a broad range of disability advocates who can assist lawyers. Disability advocates can also provide expertise on the Americans with Disabilities Act.
C. The Elderly

Elderly residents are often vulnerable and the target of legal scams such as home equity fraud. They frequently live in mobile homes or substandard houses which are more prone to suffer damage during a disaster. Legal experts in elder law or lawyers who provide assistance under the Older Americans Act can provide the expertise to deal with Medicare questions, estates and trusts issues, consumer fraud and housing issues.
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4  RESPONDING TO THE DISASTER

I.  NATURE AND SCOPE OF DISASTER ARE IMPORTANT FACTORS

During a disaster, even the smallest bar associations can make a difference in their community. The type and scope of the disaster provides the parameters for bar association response. For example, a wild fire which was concentrated in one rural county destroyed an identifiable number of homes and businesses. It did not have regional impact. The local bar president contacted the local legal aid office and 10 volunteer attorneys who then addressed insurance, real property, temporary housing assistance, food stamp and consumer fraud issues. The bar association sponsored legal workshops and gave individual consultations in conjunction with local businesses and social service providers. The bar also set up a special phone panel to handle queries from individuals who could not attend the workshops. The bar's involvement lasted several weeks.

On the other hand, a large earthquake like the Northridge trembler in 1994 necessitated a massive response. The scope of the destruction, the number of people affected and the amount of damage ($20 billion) made the task of providing services extraordinarily difficult. Numerous bar associations and legal services providers coordinated the legal effort. The resulting multifaceted approach ensured that the greatest number of survivors received legal assistance at no cost.

II.  INITIAL COMMUNICATIONS

Following a federal disaster declaration, the designated lead bar association must contact the appropriate parties for instructions and coordination assistance. Now is the time that pre-disaster planning pays off. A safe, centralized base of operation must be established immediately. The location should have photocopying equipment, telephone banks and meeting space. The disaster legal assistance committee chair should begin to implement the disaster legal services response plan. If no plan is in place, refer to the State Bar contacts in Section 1.

Maintaining a local communications network and linking with the statewide network is crucial. The State Bar Office of Legal Services and Bar Relations will be in regular communication with American Bar Association Young Lawyers Division (ABA YLD) and the Federal Emergency Management Agency (FEMA) after a federal disaster has been declared to coordinate the dissemination of information such as the date of the disaster declaration, location of Disaster Application Centers (DACs) if applicable, teleregistration number, helpline phone numbers, location of Disaster Recovery Centers (DRCs) etc. The State Bar staff maintains accurate and current contacts to assist local bar leaders in communicating with essential disaster parties.

III.  VOLUNTEER ATTORNEY RECRUITMENT

Volunteer recruitment is key to a successful disaster effort. The bar association's original volunteer committee and the volunteer list becomes the basis for a person-to-person recruitment chain. The willingness to volunteer often rapidly declines after the initial reaction to a disaster leaves the area's television screens. Attorneys should be recruited from a wide range of practice areas. Summaries of the most common legal areas that get triggered after a disaster can be found at Section 13. Sample recruitment materials can be found at Appendix L.

A.  Needs and Resources Assessment

An initial assessment of the community will help determine the nature and extent of damage caused by the disaster. This information will be useful in shaping recruitment and training efforts. If previous disasters have hit the same community, it is important to compare and contrast the similarities and differences. This manual cannot emphasize enough the need to know the local population and any special needs.
B. Coordination of Efforts

There are several major legal partners in a disaster effort. They include the local barristers group/young lawyers association, the local specialty, minority and women's bar associations, pro bono programs, local legal services programs and State Bar-certified lawyer referral services. Coordination among them is most effective when efforts are centralized at the staffing level of a local bar association, legal aid program or pro bono program. A staff coordinator can make decisions about how responsibility will be divided and how referrals will be handled. In the absence of a staff coordinator, a volunteer coordinator with sufficient backup support may be appropriate.

C. Volunteer Assistance Where the Need Is

Getting volunteers to the most affected disaster areas can be a problem in widespread disasters. Bar associations must make sure that volunteers are evenly distributed if there are multiple sites where legal assistance will be provided. Volunteers must go to locations which meet the needs of clients and not the convenience of volunteers. While volunteers prefer to provide services in their own neighborhood, it is the responsibility of the local bar to get services into all affected neighborhoods. If attorneys are avoiding certain sites where there is great need, then consider assigning attorneys so they are distributed in an equitable fashion.

D. Training Opportunities

Offering a live disaster assistance training with MCLE credit is an effective recruitment device. Training is also an important quality control tool. If possible, videotape the training for loan to individual attorneys who cannot attend the live session. The California Handbook for Disaster Legal Services can be localized for use as a training resource. Given the number of disasters in California, there is a core group of attorneys experienced in various aspects of disaster assistance who may be available to assist with training. Contact the State Bar's Office of Legal Services at 1-800-628-4858 or 415-561-8800 for more information about the names of potential trainers and training materials. The Office of Legal Services maintains a library of materials from past disasters organized by subject matter and disaster type that includes training resources. See Appendix D. Lists of training resources are also maintained. More information about training and support is provided later in this section.

E. Stages of Volunteer Attorney Involvement

Based on previous experience, different stages of legal needs will arise and recruitment efforts can be staggered to ensure volunteer attorney participation at all stages. These stages are:

1. Initial brief legal information/advice (in person or by phone);
2. Direct representation for more complex legal issues;
3. Advocacy for appealing denials of assistance by disaster assistance agencies or establishing recertification;
4. Impact litigation; and
5. Long-term recovery.

More information about service delivery models is provided later in this section.

F. Reimbursement from FEMA

Under the agreement between FEMA and ABA YLD, bar associations and other organizations coordinated by the ABA YLD to provide legal services may receive, with express prior authorization, reimbursement for "reasonable administrative expenses, including office space and supplies...." See Appendix B. Organizations must retain receipts for all expenses incurred to recruit and train volunteer attorneys who will assist local disaster victims. Examples of ordinary
expenses that have been reimbursed in previous disasters include postage, photocopying, telephone calls and cost of faxing. The cost of existing staff time is not reimbursable. However, in rare situations, FEMA may approve in advance reasonable anticipated costs for additional staffing and other extraordinary expenses.

The ABA YLD District Representative coordinates the local reimbursement process. There are two representatives in California -- one for Northern California and one for Southern California. The appropriate district representative forwards requests for anticipated expenditures and reimbursement to the national Disaster Assistance Chair and the Chair forwards the requests to FEMA. All questions regarding reimbursement should be directed to the District Representative, unless notified otherwise for a particular disaster. Call the California Young Lawyers Association Staff Administrator at the State Bar, 415-561-8219, for the names of the current district representatives.

G. Funding Considerations

Launching a disaster legal services effort after disaster strikes will have a budgetary impact. Even if some expenses may be reimbursed by FEMA, undoubtedly there will be unbudgeted costs. Local community foundations, private foundations, corporate foundations, bar foundations and large law firms may consider providing emergency funding and/or in-kind donations for disaster legal assistance, especially where the legal community is working in a coordinated fashion. For more information about potential funding sources, contact the State Bar Program Development Unit at 1-800-628-4858.

Legal services providers should consider reviewing all funding sources for restrictions on assisting disaster victims (e.g., immigration status, financial eligibility). Interest On Lawyers's Trust Accounts (IOLTA)-funded programs in California that have questions about the State Bar Legal Services Trust Fund Program can call 415-561-8252 to speak with staff. In addition, federally funded legal services programs that suffer damage or have additional needs as a result of a disaster should contact the Legal Services Corporation and/or other project directors who have experienced disasters for information about supplemental appropriations.

IV. SERVICE DELIVERY MODELS

Volunteers can be recruited to participate at all stages of delivering legal services to disaster victims and can be utilized in the various methods of service delivery.

A. Brief Legal Information and Advice

The nature of the disaster and the local population will often dictate which types of legal assistance will be appropriate. Identifying lead agencies to coordinate local or regional disaster legal services efforts will facilitate service delivery. More information about DRCs can be found in Section 5.

1. Telephone Hotline

The local bar association may choose to establish a parallel phone-based system for its provision of legal services, such as using a local or regional hotline. Hotlines have been used effectively in previous disasters. Typically, a hotline may be staffed during specific hours with volunteer attorneys. A more convenient model for attorneys is to have a lead agency such as the bar association forward intake forms to them describing the legal problem taken by a temporary intake worker (e.g., law student). The attorneys can then make follow up calls to disaster victims from their own offices. In either situation, trained attorneys are needed to monitor the quality of legal services provided. (Note that prior authorization for reimbursement must be obtained from FEMA through ABA YLD to set up a hotline and hire temporary workers to staff the hotline.)
event of a widespread disaster, the local bar lead agency could feed into a regional or statewide
toll-free hotline that the ABA YLD can establish anywhere in the United States. See Appendix L
for sample hotline materials.

2. Disaster Recovery Centers (DRCs)

DRCs are temporary facilities housed in a variety of temporary settings. Tables are set up to
provide information to disaster victims who have already filed an application through FEMA's
teleregistration about assistance available at federal, state and local levels, including legal services.
Volunteer attorneys are needed to staff the disaster legal services table if DRCs are established.
The table should be well-stocked with training and resource materials and a telephone so that
volunteers will have access to backup support if needed. There should also be a large sign so that
disaster victims will know that legal assistance is available. (Tip: Request reimbursement in
advance for the telephone and signboard from FEMA via the ABA YLD District Representative.)
If the table cannot be staffed during all hours the DRCs are open, there should be a sign stating the
days and times legal assistance will be available.

Another option is to have intake forms available. Disaster victims can be instructed to complete a
form and arrangements can be made for the DRC coordinator to fax it to a designated lead agency
for referral to a volunteer attorney. See Appendix L for sample form. Also, if a legal hotline is in
operation, the phone number should be displayed prominently.

3. Community Sites

Providing legal assistance or educational workshops on a regularly-scheduled
basis at homeless shelters, soup kitchens, schools, churches, community centers
or other sites where disaster survivors may gather is appropriate, whether
assistance is provided on an individual basis or in a group setting.

4. Media

Consider using both broadcast and print media to reach a broader range of
disaster victims, especially special populations. Broadcasting information about
federal disaster assistance programs and legal rights of disaster victims on local
English-speaking and foreign language cable television or radio may be very
effective in certain communities, especially where there are significant numbers
of people who are homebound or limited/non-English speaking. Also, legal
resource and information articles in major newspapers as well as small
community and foreign language newspapers are effective. FEMA can help
publicize the availability of legal services, especially the toll-free hotline,
through its media network.

B. Direct Representation

Individual clients frequently need attorneys to help them with individual cases (e.g., A senior may
need an attorney to sue a contractor who failed to provide a new roof for her home or a tenant may
need help with an eviction). Clients may also need attorneys to assist them with filing appeals to
the disaster relief agencies if they were denied assistance or with establishing recertification for
further assistance. Pro bono programs and legal services programs may be able to represent
disaster victims, depending upon their income level and immigration status, for individual claims
and appeals for denial of disaster assistance. Others may be able to obtain representation through
a State Bar-certified lawyer referral services. Please note that attorneys providing brief legal
information and advice under the FEMA/ABA YLD agreement are prohibited from accepting
fees. Fee-generating cases should be referred to a State Bar-certified lawyer referral service (see
discussion later in this section.)
C. Impact Work

A separate panel of volunteer attorneys may be needed to provide legal assistance in class actions or other impact work on behalf of disaster victims because other groups of attorneys are unable to handle such matters. For example, in situations where the defendant is a government agency, attorneys operating under the FEMA/ABA YLD agreement are prohibited from initiating or advising disaster victims to initiate litigation against the government to obtain disaster assistance. See Appendix B, fourth paragraph. There are some limits with respect to certain forms of administrative and legislative advocacy.

D. Long Term Recovery

Developing strategies for long term recovery and rebuilding is a very large challenge that needs to be addressed after a disaster strikes. The initial step is prioritizing problems that will need long term solutions. This requires looking beyond emergency needs and attempting to understand the larger picture in the community. Ideally, advocates should be engaging in this type of priority-setting exercise even before a disaster strikes. For example, in a legal services practice with a high unemployment rate, the first level of advocacy is representation of individual clients in administrative and judicial hearings and the second level is helping the community deal with the pressing employment problem.

Too often, this second level of advocacy is neglected. Head, James W., "Responding to Los Angeles: The Challenge of Legal Services Programs", Clearinghouse Review, August 1992. After a disaster strikes, the needs of the community are magnified. There is an even greater need to engage in long term planning and to focus attention towards issues such as employment and housing development. Below is a practical example of housing development advocacy and some specific examples of post-disaster long recovery issues.

There was a shortage of low-income housing in the San Francisco Bay Area even before the Loma Prieta earthquake struck in 1989. The earthquake greatly exacerbated the problem. Advocates worked hard to preserve the low-income housing stock in the San Francisco Bay area after the Loma Prieta earthquake. Congressional hearings were held in San Francisco and Watsonville to evaluate federal disaster response efforts. The hearings were instrumental in focusing House and Senate attention to the serious housing situation. As a result of the hearings and lobbying from advocates, federal legislation authorized the Department of Housing and Urban Development (HUD) to allocate an additional $25 million from a special Community Development Block Grant emergency relief fund to counties hardest hit by the earthquake. The funds were allocated in block grant form for the rehabilitation and replacement of very low-income housing units.

Experienced advocates who participated in disaster recovery work following the Los Angeles civil unrest and the Northridge earthquake offer the following suggestions for volunteer attorney participation in long term recovery efforts:

1. Develop outreach strategies to inform the public about the appeal rights under the various disaster assistance programs.
2. Include disaster legal issues in ongoing outreach and education efforts.
3. Educate nonprofit organizations regarding disaster-related lease obligations and insurance policy restrictions.
4. Monitor changes in FEMA regulations regarding individuals and nonprofits as well as other federal regulations impacting disaster victims (e.g., immigration).
5. Monitor the new State law that establishes the California Earthquake Authority, emphasizing the parts of the law that establish insurance and hazard mitigation funds.
6. Maintain ties with FEMA officials.
7. Advocate for continued HUD support following a disaster (e.g., emergency Section 8 housing certificates).
8. Be aware that the Department of Commerce, particularly the Economic Development Administration, may provide funding to aid with long term recovery efforts.
10. Pursue clarification of FEMA's application of regulations regarding the eligibility of certain nonprofits for disaster grants (e.g. affordable housing providers).


V. QUALITY CONTROL MECHANISMS

Since it is possible that the bar association may be dispatching large numbers of hastily trained volunteers to a number of sites, it is important to consider quality control methods. Most of these points can be stressed effectively during training sessions. A discussion about ethical considerations, including the "Duty to Act Competently," can be found later in this section.

A. Training and Support

A well-delivered training program, thorough written materials and the availability of knowledgeable individuals to provide backup support should be provided to volunteers. This Handbook can be a valuable resource for developing a training. All substantive information in this Handbook should be updated and localized by experienced volunteer attorneys [please note that the Handbook is available on diskette (WordPerfect 5.1)]. After a large disaster, special legislation and ordinances, court rules, laws or regulations may be enacted at the local and/or state level. It is important to collect such information for inclusion in the disaster legal services training. For example, after the 1989 Loma Prieta earthquake and the 1994 Northridge earthquake, the California Judicial Council adopted emergency rules which extended appellate court filing deadlines. After the 1992 civil disturbances in Los Angeles, the State legislature passed a bill requiring municipal courts in the county of Los Angeles to make certain allowances and set aside default judgments entered within a specified time period for defendants in unlawful detainer (eviction) actions.

A general disaster legal services training or a second training on appeals would be enhanced by involving representatives from government agencies that administer different disaster assistance programs, such as the Federal Emergency Management Agency, Small Business Administration, Employment Development Department, Department of Social Services and Department of Insurance. The Public Information Office for each agency may be able to identify speakers to participate in a live training.

It is also important to include in the disaster training sensitization to the emotional and psychological condition of the disaster victims. Professionals from the local community mental health system may be available to assist in this aspect of the training.

B. Intake, Screening and Tracking

User-friendly intake forms are needed so that essential information is gathered (See Appendix L). Recording the number, type and disposition of cases will be helpful for the ABA YLD District Representative who must provide case summary reports to FEMA. Also, tracking the nature of legal assistance provided by a review committee is necessary to ensure that quality service is being given in a timely manner and to identify problems that may arise.
C. Evaluation

It is critical that the legal work of volunteers be monitored to help ensure quality services are rendered to all disaster victims irrespective of their income level. A client satisfaction sheet can document problems. Bar associations may also mail client satisfaction forms to a random number of persons.

Maintaining volunteer satisfaction is also very important. Disasters are very stressful situations. Some attorneys may spend long hours on hotlines, in DRCs, or handling difficult legal problems on an individual basis. The coordinator should ask volunteers if they have suggestions to improve disaster legal services. This can be done with a written questionnaire or a short telephone interview. Ongoing evaluation by a review committee would help to ensure that quality legal services are being delivered.

D. Referrals to Experts

When a volunteer establishes that a client needs an attorney with more specialized experience, s/he can look to referral sources in the legal community.

1. State Bar-Certified Lawyer Referral Services

The local State Bar-certified lawyer referral services (LRS) may identify attorneys experienced in particular areas of law. The LRS may waive a referral fee for disaster survivors; however, the individual must be informed that there may be a fee charged for particular services (e.g., a small business owner who wants to sue a supplier for exorbitant charges). To obtain a current list of certified lawyer referral services, contact the Lawyer Referral Service Certification Program at the State Bar Office of Bar Relations at (415) 561-8250.

2. Legal Services and Pro Bono Programs

Low-income clients may need assistance with housing problems or public benefits. Volunteers should be aware of income eligibility guidelines used by legal services and pro bono programs. The State Bar Office of Legal Services has a Directory of Legal Programs in California which lists all the pro bono and local legal services offices by county. To obtain a current listing for your community, call 1-800-628-4858 or 415-561-8800.

E. Malpractice Insurance

1. Malpractice Coverage Generally Available through Established Legal Services Providers and Local Bar Associations

There is no independent coverage for malpractice that arises out of legal advice given by volunteers after a disaster. Attorneys who work through a local pro bono program with insurance are covered for the advice they provide. However, they must check with the local program to determine coverage. Most local legal services programs and bar associations which administer pro bono efforts maintain insurance for their volunteers. Attorneys should check with their own insurer if they are not participating as part of a local legal aid or pro bono program.

The agreement between ABA YLD and FEMA does not include coverage for acts of malpractice during a disaster.
2. No "Good Samaritan" Protection

There is no "Good Samaritan" legislation in California to protect volunteer attorneys providing legal services to disaster victims. (The State of Florida is one example of a state which has adopted Good Samaritan legislation.) As mentioned above, attorneys who volunteer through a local legal services program, pro bono program or bar association may be covered by that organization's malpractice insurance policy.

VI. ETHICAL CONSIDERATIONS

A. Attorney-Client Relationship

Pro bono disaster legal assistance is generally provided in two forms: (1) Educational information of a general nature and (2) Legal analysis and assistance tailored to the specific needs of identifiable individuals.

The former is educational public service activity and does not constitute the practice of law as long as the information is not specifically tailored to address individual legal needs. When an attorney provides such general information, however, the attorney may be held to a higher standard than non-attorneys. See Libarian v. State Bar (1943) 21 Cal.2d 862, 865, where it was observed that a licensed attorney should conform to the standards of an attorney in whatever capacity he or she may be acting in a particular matter.

When legal information and analysis is provided to specific individuals based on their individualized needs, even when provided informally and pro bono, the practice of law is involved and the duties of the attorney-client relationship attach. See, e.g., Beery v. City of Los Angeles (1987) 43 Cal.3d 802, 811; Miller v. Metzinger (1979) 91 Cal.App.3d 31, 40.

Thus, when an attorney provides advice and assistance to disaster survivors, it is advisable to conform to the duties and responsibilities of the attorney-client relationship. It is important for attorneys advising disaster survivors to ensure that the scope of the advice and assistance being provided and applicable limitations are clear. It should be made clear whether the attorney is providing general information and no individual assistance; is providing individual assistance but intends that no further advice or follow-up will be provided; or is providing advice in certain areas to the exclusion of others. If there is specialized assistance that the disaster victim needs beyond the scope of what that attorney is offering, that also should be addressed.

If an attorney participant undertakes more extended individual representation of a disaster client, that representation should continue to be on a pro bono basis and no fees should be charged. Charging a fee in such a circumstance renders the attorney's conduct subject to the allegation of improper solicitation. It is also contrary to the agreement between FEMA and the ABA YLD which governs most pro bono disaster legal assistance programs sponsored by bar associations and legal services entities.

B. Solicitation and Charging Fees Prohibited

While providing disaster pro bono assistance, business development is inappropriate. The purpose of disaster assistance is for participating attorneys to advise disaster survivors at no charge by providing limited information, advice and assistance. It is inappropriate for participating attorneys to use the disaster assistance program as a marketing opportunity to refer disaster business to themselves or colleagues for pecuniary gain.

Under the FEMA/ABA YLD agreement, participating attorneys are prohibited from accepting fees for the advice and assistance they provide. See Appendix B, Paragraph 5.
Additionally, in-person solicitation of individuals in a crisis situation for the pecuniary gain of the attorney may constitute a disciplinary offense under California Rule of Professional Conduct 1-400 which regulates attorney advertising and solicitation. Also, State Bar Formal Opinion 1995-144 discusses the impropriety of attorneys soliciting business at a disaster site prior to having been retained by any client related to the disaster.

The State Bar's Office of the Chief Trial Counsel is on alert during disasters to investigate potential attorney abuses, inform the public how to find qualified legal assistance and how to report improper attorney solicitation. (See Appendix H for a sample Notice to the Public and Information Regarding the State Bar's Disaster Response Plan.)

Where attorneys have directly solicited disaster survivors in the hope of generating legal business for the attorney's pecuniary gain, discipline has been imposed and upheld by the courts. See, e.g., Ohralik v. Ohio State Bar Association, 436 U.S. 447, 98 S.Ct. 1912 (1978); Florida Bar v. Went For It, Inc., 115 S.Ct. 2371, 132 L.3d.2d 541 (1995). Complaints against attorneys for improper solicitation can be filed by calling the State Bar's Complaint Intake Line at 1-800-843-9053.

C. Duty To Act Competently

1. Applies to Pro Bono Services

The duty to act competently is a disciplinary duty as well as a civil duty. Failure to meet the appropriate standard can give rise to disciplinary liability as well as civil malpractice liability.

The duty to perform competently applies fully to pro bono services. An attorney must perform such legal services with diligence, learning and skill, and the mental, emotional and physical ability reasonably necessary to the tasks involved (See Rule 3-110, Rules of Professional Conduct). The duty to act competently also includes the duty to supervise the work of subordinate attorneys and non-attorneys. See, e.g., Trousil v. State Bar (1985) 38 Cal.3d 337, 342; Palomo v. State Bar (1984) 36 Cal.3d 785, 795-96; Gadda v. State Bar (1990) 50 Cal.3d 344; see also "Discussion" to Rule 3-310.

2. Ensuring that Competent Advice Is Delivered

Because of the civil and disciplinary ramifications of performing competently, attorneys providing disaster legal assistance, as well as the legal service providers and bar associations sponsoring such services, should ensure that the appropriate level of performance is maintained and that appropriate documentation exists with respect to the services provided. Individuals receiving advice should be treated as clients. Files should be maintained on each matter recording the advice and assistance given, consistent with the standards applicable to any attorney-client relationship.

Attorney participants are intended to be available to answer basic questions and provide emergency assistance and are not expected to take on extended, in-depth representation. It is not unusual for participating attorneys not to be experts in the particular areas on which they are being consulted. It is, therefore, important for participating attorneys to limit their advice and assistance to the areas in which they have appropriate skill and knowledge. Attorneys should inform disaster clients of the limitations on the attorneys' advice.

Attorneys need to take particular care in this area because recent cases have held that an attorney is liable not only for the advice given on issues within the attorney's expertise, but for advice which should have been given on matters which were specifically excluded from the attorney's scope of representation. As observed in Nichols v. Keller (1993) 15 Cal.App.4th 1672, 1683-84:
Not only should an attorney furnish advice when requested, but he or she should also volunteer opinions when necessary to further the client's objectives. The attorney need not advise and caution every possible alternative, but only of those that may result in adverse consequences if not considered.

Even when a retention is expressly limited, the attorney may still have a duty to alert the client to legal problems which are reasonably apparent, even though they fall outside the scope of representation. The rationale is that, as between the lay client and the attorney, the latter is more qualified to recognize and analyze the client's legal needs. The attorney need not represent the client on such matters. Nevertheless, the attorney should inform the client of the limitations of the attorney's representation and of the possible need for other counsel.

Under this standard, an attorney is liable if the attorney should have foreseen a contingency and failed to warn or advise the client regarding it even though it may lay outside the scope of representation and expertise of the attorney in question.

Thus, it is advisable for those sponsoring disaster assistance programs, such as bar associations and legal service providers, to provide preliminary training to attorneys participating and to have available experienced attorneys on the subjects that most often arise in disaster circumstances so that guidance can be provided to participating attorneys on an attorney-to-attorney basis.

Attorney participants should also strive to recognize when they have reached the limits of their experience and when to seek more specialized expertise and/or formally refer clients to more experienced legal experts through the procedures of the FEMA/ABA YLD agreement and/or sponsoring entity.

Errors and omissions insurance coverage is not provided under the FEMA/ABA YLD agreement. It can be available through sponsoring bar associations and legal service entities. Otherwise each participating attorney should check with his/her own carrier to determine the extent to which pro bono disaster assistance is covered. (See Paragraph V.E., Malpractice Insurance, above.)

3. Prohibition Against Advising Disaster Survivors About How To Sue the Government

If attorneys are offering services pursuant to the FEMA/ABA YLD agreement, they must abide by the restrictions contained in the agreement on the advice that can be given. Under the agreement, attorneys cannot advise disaster survivors about how to bring lawsuits against the government or initiate a lawsuit against the government to obtain disaster assistance. See Appendix B, fourth paragraph.

Disclosure should be made to clients that participating attorneys cannot provide assistance or advice on this subject. Clients should be advised to seek advice elsewhere if they appear to have meritorious claims involving the government.

D. Confidentiality

Business and Professions Code § 6068(e) states that an attorney shall "maintain inviolate the confidence and at every peril to himself or herself, preserve the secrets, of his or her client." In addition, the attorney-client privilege applies to communications between attorney and client which the client reasonably believes to be confidential. See Evidence Code § 950 et seq.

Participating attorneys should assure that communications with disaster survivors are protected by confidentiality at the time they occur and thereafter. Care should be taken to assure that the physical set-up and surroundings where disaster assistance is provided preserves confidentiality.
The information gathered should be maintained in a file or other format which allows for confidentiality. If disaster assistance is provided in a group situation where more than one disaster victim is present, particular caution should be taken to avoid the inadvertent waiver of confidentiality.

E. Limiting Liability

Even though the scope of representation may be limited by an attorney, the liability of an attorney giving advice, cannot be limited. Rule 3-400, Rules of Professional Conduct expressly prohibits attorneys from prospectively limiting the attorney's liability. The fact that an attorney is providing pro bono assistance does not provide any greater protection from liability than in any other attorney-client situation. See Nichols v. Keller, 15 Cal.App.4th at 1684.

F. Conflicts Of Interest

Conflicts of interest must be avoided when advising disaster survivors in the same manner as with the representation of any other client. (See Rule 3-310, Rules of Professional Conduct.) As much as possible, procedures should be in place to identify potential and actual conflicts, obtain appropriate waivers, make appropriate disclosures and otherwise avoid prohibited conflicts of interest. Where practicable, disaster assistance providers should identify and therefore reduce conflicts of interest at the screening stage.

Care should be taken to assure that adversaries are not advised or assisted by the same attorney or entity unless effective safeguards are established. If appointments are set in advance, the names of all disaster survivors seeking assistance and their opposing parties should be reviewed to identify those who are currently receiving assistance and those who have received assistance in the past from the provider. Participating volunteer attorneys should review in advance the names of those they are scheduled to see to identify potential conflicts with their law firms. Conflicts involving a particular client can be imputed to an entire firm sometimes with serious ramifications. See, e.g., Henriksen v. Great American Savings & Loan (1992) 11 Cal.App.4th 109; In re Complex Asbestos Litigation (1991) 232 Cal.App.3d 572.

Once a potential or actual conflict is identified, appropriate disclosures and consents should be obtained, the disaster assistance discontinued or other appropriate action taken to address the conflict issue. It also noteworthy that there are some matters in which the conflicts may be such that written consent may not suffice for non-disciplinary purposes. See Woods v. Superior Court (1983) 149 Cal.App.3d 931; Klemm v. Superior Court (1977) 75 Cal.App.3d 893; Ishmail v. Millington (1966) 241 Cal.App.2d 520.

G. Unauthorized Practice

Where disaster assistance is provided by attorneys, concerns regarding non-attorneys providing legal advice are not present. However, it is possible that non-attorneys may be involved in the process as well. In such circumstances, care should be taken to assure that non-attorneys do not provide more than clerical or coordination assistance unless they are properly supervised by an attorney. See, e.g., People v. Landlords Professional Service (1989) 215 Cal.App.3d 1599. It is a crime and a disciplinary offense to engage in the unauthorized practice of law (Rule 1-300, Rules of Professional Conduct; Bus. & Prof. Code, § 6125 et seq.). It is also prohibited for an attorney to aid or assist anyone in the unauthorized practice of law (Rule 1-300, Rules of Professional Conduct).

H. Consultation with State Bar Ethics Hotline

Attorney participants should be informed that the State Bar Ethics Hotline (1-800-2-ETHICS or 1-800-238-4427) is available to attorneys for guidance on professional responsibility issues. Although the Ethics Hotline staff does not provide advice, they do direct attorneys to rules,
statutes, cases and advisory opinions on professional responsibility for the attorneys themselves to review and analyze. Attorneys are encouraged to contact the Ethics Hotline if they need help with ethical concerns described above or with other ethical issues.
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5 FEDERAL EMERGENCY MANAGEMENT AGENCY

DISCLAIMER NOTICE--

Please be advised that the following information regarding FEMA disaster assistance programs is designed to provide a general familiarity with the programs as they have been applied in past disasters. FEMA disaster assistance programs are flexible and discretionary in nature. Accordingly, it is strongly recommended that users of this manual verify the following information with FEMA following a particular disaster declaration.

OVERVIEW

The Federal Emergency Management Agency (FEMA) provides individual disaster victims with assistance under several programs. The eligibility rules for each program differ -- an applicant who does not qualify for one program, may qualify for another.

FEMA is also responsible for emergency planning, preparedness, mitigation, response and recovery through administration of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). FEMA provides assistance to both public entities and individuals. This section will focus only on the programs which assist individuals and families. For an overview of disaster individual assistance programs available for renters and homeowners, see the chart at the end of Section 6.

I. DECLARATION OF A DISASTER

A. Local Disaster or State of Emergency

When a natural or man made disaster arises, the local community -- both governmental and volunteer -- responds. The local Red Cross, Salvation Army, or other private relief agencies usually initiate assistance to victims of a local disaster such as a fire or flood. In some cases, the degree of the disaster exceeds local resources. When conditions of extreme peril or disaster threaten the safety of persons and property, the local governing body, city council or board of supervisors, declares a local state of emergency. This action releases local emergency funds and emergency powers.

When this is insufficient to meet the needs of the crisis, the county or city government requests the state's governor to proclaim a state of emergency. This releases state funds for reimbursement of local costs. It allows the state to use emergency powers to redirect funds to the crisis and allows for emergency property tax relief and housing loan funds to owners of damaged private residences. It is a prerequisite for requesting federal recovery assistance.

B. Disaster Declaration Process for a Major Disaster

1. State Action

If the damage exceeds state, local and private relief resources, the governor submits a letter to the FEMA Regional Director requesting Federal Government assistance.

2. Federal Response

The Regional Director investigates and makes a recommendation to the Director of FEMA in Washington, D.C. The Director of FEMA recommends to the President whether or not a federal disaster should be declared.
3. **Action by FEMA**

Once the President makes a Federal disaster declaration, the Director of FEMA appoints a Federal Coordinating Officer (FCO) to coordinate the administration of local disaster assistance programs. The FEMA Regional Director may designate a Disaster Recovery Manager (DRM), but often the FCO and DRM are the same person. The Associate Director of FEMA designates the types of available assistance to disaster victims and the eligible program assistance areas. Also, the State Governor appoints a State Coordinating Officer (SCO) to coordinate state and local disaster assistance efforts with FEMA. A Disaster Field Office (DFO) is established in or near the affected area. The DFO houses federal and state staff responding to the disaster. A chart summarizing the disaster declaration process is located at the end of Section 5.

C. **Presidential Declaration of Disaster**

The date that the President makes a Declaration of a Major Disaster (or Emergency) is the key to releasing funds for three major types of federal disaster assistance, if requested and designated.

1. **Human Services (Individual Assistance)**
   a. Disaster Housing Assistance (See Section 7)
   b. Small Business Administration loans to individuals and businesses (See Section 9)
   c. Farm Service Agency (FSA) Emergency loans to farmers and ranchers
   d. Individual and Family Grants (See Section 8)
   e. Emergency Food Stamps (See Section 11)
   f. Crisis Counseling (See below II.B.4.)
   g. Disaster Unemployment Assistance (See Section 10)
   h. Disaster Legal Services (See Sections 2 and 4)

2. **Infrastructure Assistance to State and Local Governments and Eligible Private Non-Profit Organizations (Public Assistance)**
   a. Debris clearance;
   b. Repair of public roads, streets, bridges, buildings;
   c. Emergency protective measures, search and rescue, demolition of unsafe structures; and
   d. Repair/replacement of water control facilities (dikes and levees).

3. **Hazard Mitigation Grant Program for State and Local Governments and Eligible Private Non-Profit Organizations**

Provides financial assistance for approved mitigation measures which are cost effective and substantially reduce the risk of future damage from a major disaster.

D. **Deadlines for Individual Assistance Programs**

The declaration date is an important date because it is the basis for all disaster assistance deadlines. The Incident Period which is the time interval during which the disaster-causing incident occurred is also important because the damages or hardship claimed must have resulted from the disaster-causing incident during that period or in anticipation of that incident. A chart listing the number of days or months after the disaster declaration date within which an applicant may submit a timely application can be found at the end of Section 5.
E. Denials and Appeals

Individuals who miss deadlines, are found ineligible for assistance, or receive an inadequate amount of assistance may appeal the decision. In addition, individuals whose applications are withdrawn or whose applications are refused because of late filing may appeal. All FEMA appeals must be filed within 60 days of the date of the notice of decision. The agency must review the appeal and make a final decision within 90 days.

Every program and agency has a separate appeals program. An applicant must file a separate appeal for each denial.

F. No Duplication of Benefits

Individuals and families may receive assistance from various sources: private insurance, FEMA, traditional government benefits, Small Business Administration loans, etc. However, the rule is that FEMA may not provide benefits duplicated through insurance or other governmental assistance programs. FEMA can provide assistance that may ultimately be paid for by insurance, for example, subject to a repayment requirement (see below).

G. Sequence for Disaster Aid

The sequence for disaster assistance duplication is the following:

1. Voluntary Agencies emergency assistance;
2. Insurance (See Section 13F);
3. Disaster Housing Assistance (housing or housing repairs) (See Section 7);
4. Small Business Administration loans or Farm Service Agency emergency loans for farmers and ranchers (See Section 9);
5. Individual and Family Grants Program assistance (See Section 8);
6. Volunteer agencies "additional assistance" programs;
7. Cora Brown Fund (See below H).

Assistance only duplicates other aid which is higher on the list. Duplication of benefits exists when a family receives disaster assistance funds for the same need more than once. For example, a family may receive money for home repairs from both the Individual and Family Grant Program (IFGP) (#5 in the sequence) and from insurance (#2 in the sequence) for the same repairs. Since IFGP is #5, the family will probably have to pay IFGP back since it comes later in the sequence. However, if they can show that the cost for eligible repairs exceeded the money received or the IFGP award covered their insurance deductible, they may not have to repay the award.

H. Cora Brown Fund

The Cora Brown Fund ("Fund") which is administered by FEMA provides special disaster assistance awards which are made possible by a bequest of funds from the late Cora C. Brown of Kansas City, Missouri. The fund is used for extraordinary circumstances involving serious, unmet disaster-related needs of individuals.

1. Disaster Assistance

Fund awards are to be used to provide for disaster-related needs that have not been or will not be met by governmental departments and agencies, or any other organizations which have programs to address such needs. It is not intended to replace or supersede these programs or to duplicate assistance for which a person is eligible from other sources.
General categories of assistance include:

a. Disaster-related home repair and rebuilding assistance;
b. Costs associated with temporary housing or permanent rehousing;
c. Disaster-related unmet needs; and
d. Other services which alleviate human suffering and promote the well-being of disaster victims.

2. Identification of Candidates for Assistance

Assistance is not available to disaster victims in non-declared disasters or in non-declared counties.

Because the Fund is not automatically available, disaster victims do not apply for such assistance. Candidates who may be in need of this assistance may be identified by the Regional Director through contacts with other departments or agencies, or by local governments, the American Red Cross, and other volunteer agencies active in disasters. A panel of such agencies such as an unmet needs committee may be established to facilitate identification of disaster victims who may benefit from the Fund.

An award may be provided to the disaster victim or jointly to him/her and to the State, a local agency or volunteer organization to assist in providing the approved assistance. Assistance may be awarded to provide authorized services which benefit a group of disaster victims. Contact FEMA for more information on the operation of the fund.

II. FEMA AT WORK

A. Application Process

Each applicant must register for assistance (either by telephone or, if provided for, in-person). A FEMA screener registers each person and completes a one-page computerized application form. See Appendix L for sample application form. A control number appears on the top of each application for identification purposes.

B. Teleregistration and Disaster Recovery Centers

1. Teleregistration

After the President makes a Declaration of Disaster, individuals may call toll-free 1-800-462-9029, TDD 1-800-462-7585 and register for disaster assistance. AT&T and FEMA may provide interpreter services for non-English speakers. Procedures for in-person registration are decided on a disaster-by-disaster basis and will generally not be implemented except as a last resort when teleregistration is impossible or impractical.

Applicants will need to have the following information available when they teleregister:

a. Social security number;
b. Physical and mailing address of the damaged property;
c. Insurance information;
d. Phone number where they can be reached; and
e. A description of their losses.

An applicant's response to the questions on the FEMA registration/application form the basis for consideration for programs administered by FEMA, as well as referral by FEMA to disaster assistance programs such as SBA and IFGP which are administered by other agencies.
All applicants receive a control number which enables them to track their application. Each applicant should keep this number and the name of the person who registered them in the event of lost or disputed applications.

2. Outreach Teams and Workshops

In addition to using the media, FEMA and OES conduct workshops at outreach locations to inform local government, non-profit agencies and disaster victims about the available disaster programs, as well as the most current state/federal regulations. FEMA uses the outreach teams and workshops as a means to inform persons throughout a widespread disaster area about the disaster relief effort and to encourage individuals to apply for benefits.

3. DRCs -- Disaster Recovery Centers

Disaster Recovery Centers (DRCs) are temporary facilities that may be established in disaster areas to provide assistance information to disaster victims. FEMA in coordination with OES decides whether to, and for how long to, establish DRCs after each disaster. Geography and the extent of damage are major factors in considering whether to open DRCs and their locations. Each DRC is managed and staffed by both FEMA and state OES personnel.

DRCs may include representatives from various federal, state, local government and volunteer agencies. They may provide information and assistance in areas such as legal services, individual loans, financial grants, tax advice, consumer concerns, public benefits, unemployment insurance, agricultural assistance, medical services, veterans services and volunteer services. FEMA may use mobile DRCs to reach homebound victims or isolated communities as necessary.

4. DRCs -- Crisis Counseling

Disaster victims are eligible for crisis counseling if they were residents of the designated major disaster area or located in the area at the time of the disaster event. They must have a mental health problem which was caused or aggravated by the disaster or its aftermath or benefit from preventive care techniques. Crisis counseling is available not only for victims but also for emergency workers who may become overwhelmed during disaster work. Disaster crisis counseling services are not limited to the DRCs.

5. Voluntary Assistance Agencies (VOLAGs) at DRCs Including Legal Services

Each community also has many voluntary agencies including, but not limited to, the American Red Cross, Salvation Army, Economic Opportunity Councils, food banks, agencies on aging, independent living centers and local legal services providers and bar associations. Each of these agencies may provide information or persons who can assist survivors with community resources. Not all DRCs will have representatives from the same entities and participation varies from disaster to disaster.

C. FEMA's Inspection, Verification, Recertification and Audit Process

1. Initial Response

Immediately following a disaster, the American Red Cross and other volunteer groups provide life supporting services such as food and shelter. FEMA, in conjunction with OES, coordinates the efforts of many other federal, state, local and volunteer agencies that then provide services to help people through the recovery process.
2. Inspections

For FEMA Disaster Housing Assistance (DHA) including rental assistance and home repairs, FEMA sends a FEMA inspector to inspect the property for disaster-related damages. The FEMA inspector does not make eligibility determinations. The inspection information gathered will be used for eligibility determinations for DHA and for IFGP home repair and personal property damage assistance.

Applicants must be available for inspections on short notice or their application may be withdrawn. They do not need to wait until the FEMA inspector comes to their home in order to start cleaning up. Applicants should be prepared to do the following for the FEMA inspector:

- Verify home ownership and residence or tenancy;
- Sign the disaster application;
- Sign a declaration of legal presence;
- Provide identification showing that the applicant is the person he/she says he/she is;
- Provide proof of damages to the home or personal property;
- Present receipts for disaster-incurred expenses such as for the purchase of supplies for repairs; and
- Provide photos of the property before any repairs were made.

FEMA inspectors are different from SBA inspectors, local city building inspectors, insurance adjusters, etc. Applicants should request proof of identification from anyone inspecting their premises. They should also request copies of reports from all the individuals/agencies inspecting the premises.

The FEMA inspection information is generally transmitted to a FEMA National Processing Service Center (NPSC) for processing.

3. Review, Verification and Recertification

The NPSC is responsible for processing the disaster assistance registrations. The processing is centralized in order to provide consistent, efficient, orderly, and responsive service. The NPSC's duties include gathering and reviewing information and making eligibility determinations on FEMA DHA applications; maintaining records; and responding to applicant questions, concerns and issues.

The NPSC reviews the inspection data and the application information and makes the decision to grant or deny assistance or to request additional information and/or verification of eligibility criteria and may request for example records of home ownership or tenancy, copies of insurance documents, estimates of repairs, pay stubs, etc. FEMA notifies the applicant by mail of the decision to grant or deny assistance. The assistance, if any, is generally provided in the form of a check issued by the United States Treasury Department to the applicant and mailed separately from the notice.

If additional assistance is requested, FEMA may request additional verifications after the initial grant. Some programs, such as rental assistance or mortgage and rental assistance may be provided for an initial one-, two-, or three-month period and require recertification if assistance is needed for a longer period of time. An applicant must submit additional information/documentation on his or her housing and/or financial status depending on the type of assistance requested to obtain recertification. Receipts documenting how the initial grant was spent must also be provided. See Section 7 for more information about recertification for Continued Rental Assistance and Mortgage and Rental Assistance.
4. Legal Presence Requirement for Disaster Housing Assistance Eligibility

In 1995, Congress passed legislation prohibiting non-emergency disaster assistance for all FEMA DHA Programs (Rental Assistance, Mortgage and Rental Assistance, Home Repair Assistance and Transient Accommodations) to persons not lawfully present in the United States. Prior law in 1994 had prohibited FEMA from providing Rental Assistance and Mortgage/Rental Assistance for more than 90 days to persons not lawfully present in the United States.

All applicants applying for FEMA DHA (beginning with FEMA-DR-1067, United States Virgin Islands, September 16, 1995) will be requested to sign a self-certifying declaration that they are a United States Citizen or National, Lawful Permanent Resident, or are otherwise lawfully present within the United States. See Section 13E.

In 1996, Section 401 of The Personal Responsibility and Work Opportunity Reconciliation Act, specified that all persons, regardless of their immigration status, are eligible for short-term, in-kind, non-cash disaster assistance. Moreover, the U.S. Attorney General has the authority to designate certain government-funded community programs or services or assistance necessary for the protection of life and safety for which all persons will be eligible, regardless of immigration status. As of the printing date of this publication, FEMA continues to follow the 1995 legislation referenced above for its non-cash disaster housing assistance programs. Also, FEMA anticipates amending its definition of "lawful presence" in light of welfare reform legislation. See Section 13E.

5. Audits

FEMA audits a random sampling of all persons granted assistance for verification of lawful presence status.

Other individuals may be audited for assistance eligibility, fraud or documentation on how they spent the money in accordance with their award. For example, housing assistance cannot be used for food or to replace personal property; money for repairs cannot be used for mortgage or rent payments. Those found ineligible or who have misspent FEMA grants may have to repay the money they received. All households that receive FEMA grants should keep copies of all receipts and documents in case of an audit.

D. The Appeals Process

Any decision regarding eligibility for, from, or amount of DHA may be appealed.

1. Basic Reasons for an Appeal

Applicants may file an appeal for many reasons. The major ones include:

a. Applicant eligibility;
b. Grant of less than the amount requested;
c. Withdrawal of the applicant's application;
d. Cancellation of an application 'for cause';
e. Denial because insurance is available;
f. Denial of continued assistance; and
g. Denial for late filing for a program.

Persons filing an appeal should have a clear understanding of FEMA's decision in their cases. If the FEMA decision is not specific, applicants can call the FEMA Information Helpline at 1-800-525-0321 (TDD: 1-800-660-8005) for clarification. Applicants must also determine the specific documentation required for each program and provide supporting documentation showing why the decision was wrong and why they are entitled to assistance. An appeal may be denied if the
applicant fails to provide new additional information or documentation supporting a change in the initial decision. When warranted, an appeal may result in a reinspection of the damaged property.

2. Deadlines

All appeals must be postmarked no later than 60 days after the date of the FEMA notice of decision. FEMA does not accept appeals if the postmark is after the deadline date. FEMA generally acknowledges receipt of appeals within 15 days. If an applicant does not receive an acknowledgment within that time period, s/he should contact the FEMA Information Helpline.

The appeal and supporting documentation should be sent to the address provided on the FEMA notice of decision. If more time is needed in order to submit additional supporting information and/or documentation to FEMA, this should be noted in a timely appeal.

3. Inspection Reports

Applicants may obtain a copy of FEMA's records regarding a challenged decision. By examining the records, an applicant can determine its accuracy in describing property damage, and regarding insurance coverage or eligibility information. The documents on which FEMA based its decision can help the applicant to frame his or her appeal. A written request for copies of documents should be made to the address provided for that purpose on the FEMA notice of decision.

Applicants may elect to both appeal and make a request for documents and/or inspection reports. These are, however, separate and distinct and must be sent to the appropriate FEMA address.

4. Right to an Authorized Representative

Applicants can file an appeal directly. However, each applicant is entitled to have his/her authorized representative, such as a volunteer attorney, or a family member or friend file the appeal and represent the applicant. FEMA must have a written authorization from the applicant in order for anyone else to act on an applicant's behalf or request copies of records. Volunteer attorneys under the ABA YLD umbrella can assist applicants with appeals.

5. Final Decision

FEMA issues a final written decision within 90 calendar days of the date it receives the appeal. There is no right to a hearing except for applicants living in FEMA-leased housing.

6. Recoupment

Some applicants receive assistance and later, FEMA finds them to be ineligible. Some applicants receive duplicate funds for the housing or property for which FEMA paid. Others unwittingly spend checks that FEMA issues in error. Still others spend money from one program, such as Rental Assistance, to replace personal property or for food. FEMA may initiate recoupment procedures against these persons when it discovers the error.

An applicant can resolve the situation by showing that an error was made in determining the applicant was not entitled to the funds. If an applicant cannot resolve the situation, FEMA will collect the debt. Although FEMA contends that lack of fault is not a defense to recoupment, there are exceptions and circumstances that may excuse or reduce the obligation to repay. Advocates can assist applicants in finding an exception to recoupment or in establishing a reasonable repayment schedule.
Endnotes

1. 42 USC § 5121 et seq. as amended

2. The United States Department of Agriculture's (USDA) Farm Service Agency (FSA) provides emergency loans to farm owners to help cover production and physical losses in counties declared as disaster areas by the President or designated by the Secretary of Agriculture. FSA was set up as part of a reorganization that incorporated programs from several agencies, including the Farmers Home Administration (FmHA). Applications for emergency loans must be received within eight months of the disaster declaration date. For more information about FSA emergency loans, contact FSA at 916-498-5300. For more information about disaster assistance for farmers, see Farmers' Guide to Disaster Assistance, produced by the Farmers' Legal Action Group (FLAG). FLAG can be reached at 612-223-5400.

3. 42 USC § 5189a

4. 42 USC § 5155; 44 C.F.R. § 206.191

5. 42 USC § 5154, 5155

6. 42 USC § 5201; 44 C.F.R. § 206.181

7. Public Law No. 104-19 § 2006 (Emergency Supplemental Appropriations for Additional Disaster Assistance for Anti-Terrorism Initiatives, for Assistance in the Recovery from the Tragedy that Occurred at Oklahoma City, and Rescissions Act, 1995)

8. Public Law No. 104-193


10. 44 CFR § 206.101(m)
Disaster Declaration Process

Disaster Incident

Private Relief Agencies & Local Government Response
Declaration of city/county emergency
Mobilization of Red Cross, etc.

State Response
Declaration of State of Emergency; Governor requests FEMA Regional Director to recommend that the President declare a major disaster

Federal Response
President issues declaration of a major disaster
(or declares an emergency or denies the disaster request)

Federal and State Appointments
FEMA Director appoints Federal Coordinating Officer (FCO); FEMA Regional Director designates a Disaster Recovery Manager (DRM); FEMA Associate Director designates the types of assistance available and the eligible program assistance areas; Governor appoints State Coordinating Officer (SCO)

Disaster Programs Implemented
FCO, DRM (often the same person) and SCO work together; Disaster Field Office (DFO) is established

Temeregistration Implementation
Disaster Application Centers (DACs) will be implemented as a last resort for in-person registration only if teeregistration is impossible or impractical

Disaster Recovery Centers (DRCs)
Private relief agencies, federal, state and local government agencies, FEMA, crisis counseling and legal services are available to provide assistance to disaster victims
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* Deadlines may be extended by FEMA based on the nature and scope of the disaster.
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6 INFORMATION FOR DISASTER ASSISTANCE APPLICANTS

I. HOW TO USE THIS CHAPTER

This section is designed to be the cornerstone of this California Handbook for Disaster Legal Services (Handbook) and accomplishes the following:

A. Summarizes how to apply for federal disaster assistance;
B. Encapsulates important information for advocates to give to all disaster assistance applicants;
C. Provides checklists of applicable assistance programs and advice for people with specific types of problems; and
D. Cross-references the checklists with the Handbook.

All advocates should read Paragraph III., "Essential Information for Disaster Assistance Applicants," and use the checklists in this Section as a map to the rest of the Handbook.

II. HOW TO APPLY FOR FEDERAL DISASTER ASSISTANCE

A phone call to the Federal Emergency Management Agency (FEMA) and written application to the Small Business Administration (SBA) should automatically trigger application to FEMA, SBA and the Individual and Family Grant Program (IFGP).1

In order to be eligible for an IFGP grant, applicants must complete the FEMA application process, which may include a referral to the Small Business Administration. If an applicant receives an SBA application, it must be completed. Applicants who cannot afford to repay a loan will be automatically referred to IFGP. There is a summary denial procedure from the SBA program for low-income applicants. For an overview of the grant-making process, see the chart "Chronology of FEMA, SBA and IFGP Applications," at the end of this Section.

III. ESSENTIAL INFORMATION FOR DISASTER ASSISTANCE APPLICANTS

A. There are separate agencies with different application forms that may need to be completed. Sometimes the applicant completes the form (e.g. SBA), and in other instances, applications (e.g. FEMA) are completed by a staff person or volunteer who asks the applicant questions. The applicant should receive and keep a copy of all applications.

B. Applicants have distinct appeal rights for each of the agencies to which they apply.

C. Applicants have 60 days to appeal decisions from FEMA and IFGP after denial. See Section 5; Section 8, Paragraph VIII. Applicants have 30 days to appeal SBA decisions, after a reconsideration is denied. See Section 9, Paragraph II.E. Application deadlines are rigid, so applicants should consider writing an appeal letter as soon as possible and should keep a photocopy of it. Even a simple initial letter is adequate, because the agencies accept revisions. Applicants who believe that the denial is based on an inadequate inspection should request a re-inspection rather than appeal.

D. There are several different agencies that each respond to separate needs and hardships. The checklists below help to identify which programs and agencies may be of assistance.

E. Applicants are urged to tell the FEMA application registrar all of their disaster-related damage and to make sure that the registrar writes everything down by asking the registrar to read the list back.

F. The FEMA Helpline (if applicable) provides information about the status of applications. Applicants may contact their local legal services office and any operational disaster legal hotlines.
for free legal assistance. (However, note that most legal services offices only provide services for low-income people.)

G. **Saving the following original documents is important** in order to obtain assistance and recertification: Rent receipts, leases, all correspondence with FEMA, SBA or IFGP, verification of disaster-related medical or mental health treatment and all correspondence with insurance carriers. It is also important to save damaged personal property until the inspector sees the property.

H. For an overview of FEMA and Non-FEMA disaster individual assistance programs available for renters and homeowners, see the charts at the end of Section 6.

IV. CHECKLISTS

A. Damaged or Destroyed Residence

1. **Assistance with Housing Costs**

   FEMA: FEMA provides Transient Accommodations (reimbursement for lodging) up to 30 days and Rental Assistance (RA) for up to 90 days. If assistance is needed for longer than 90 days, stringent certification procedures must be met. Rent receipts are required in order to be eligible for assistance beyond 90 days. (Both programs are available for renters and homeowners.) See Section 7.

   AFDC: Aid to Families with Dependent Children (AFDC)\(^2\) may provide a Non-Recurring Special Needs (NRSN) grant to eligible recipients to pay for interim shelter or temporary housing. See Section 12.

   AFDC: The AFDC Homeless Assistance Program (HAP) may provide a once in a lifetime grant to eligible homeless families. There are two types of aid currently available: temporary housing assistance to pay for motels, etc., and permanent housing assistance to pay for move-in costs for permanent housing. See Section 12.

   Other cross-references:

   - Overview charts of FEMA and Non-FEMA Disaster Individual Assistance Programs Available for Renters and Homeowners, Section 6
   - Other Housing Assistance, Section 7
   - General housing legal summary, Section 13D
   - Public Assistance Chart, Section 12

2. **Homeowner's Assistance to Repair, Replace or Rebuild Housing**

   FEMA: Regardless of income, FEMA may provide money to quickly restore a primary residence to livable conditions. See Section 7.

   IFGP: For low-income people, IFGP may provide a grant for home repairs. See Section 8. Note special rule for flood insurance. See Section 13F.

   SBA: For people who earn enough money to repay a loan, SBA offers low-interest loans to repair, replace or rebuild primary residences. See Section 9. Note special rule for flood insurance. See Section 13F.

   AFDC: AFDC may provide a NRSN grant to pay for essential repairs to a damaged home owned by an AFDC family. See Section 12.
HUD: May offer Section 8 rental assistance depending on the type of disaster. HUD offers Section 203(h) mortgage insurance for disaster victims as administered by the Federal Housing Administration (FHA).

Other cross-references:

Comprehensive Chart of Chronology of FEMA, SBA and IFGP Applications, Section 6
Overview charts of FEMA and Non-FEMA Disaster Individual Assistance Programs Available for Renters and Homeowners, Section 6
FEMA and other housing assistance, Section 7
Insurance legal summary, Section 13F
Miscellaneous legal summaries on real property and taxes, Section 13G.

3. Personal Property Replacement

FEMA: FEMA may give disaster victims money for "essential furniture" that is needed to occupy a primary or temporary residence. See Section 7.

IFGP: For low-income people, IFGP may provide a grant to repair or replace clothes, household items, home furnishings, large appliances or tools that were required for employment. See Section 8. Note special rule for flood insurance. See Section 13F.

SBA: For people who earn enough money to repay a loan, SBA may provide a low-interest loan to repair or replace personal property. See Section 9. Note special rule for flood insurance. See Section 13F.

AFDC: AFDC may provide eligible recipients with a NRSN grant to replace or repair clothing and/or household items. See Section 12.

Other cross-references:
Insurance legal summary, Section 13F

4. Moving and Storage Costs

IFGP: IFGP may provide money for moving and storage costs in order to prevent or reduce damage. See Section 8.

AFDC: AFDC may provide an NRSN grant for eligible recipients to pay for moving and storage costs. See Section 12.

5. Transportation

IFGP: IFGP may provide money for public or private transportation for disaster victims who were displaced and must commute to work. See Section 8.
B. Owners and Employees of Destroyed or Damaged Businesses and Others with Financial Problems Caused by the Disaster

1. Unemployment Insurance

Applicants can register for regular Unemployment Insurance (UI) or Disaster Unemployment Assistance (DUA). Applicants should contact the Employment Development Department (EDD) regarding application to both programs. See Section 10 and Section 13C.

2. Mortgage and Rental Assistance (MRA)

FEMA will pay rent or mortgage payments for tenants or homeowners who are subject to immediate eviction or foreclosure due to disaster-related "financial hardship". Hardship could be the loss of a job, or a business for people who are self-employed. See Section 7. Applicants should tell the FEMA registrar if they have been approved for DUA when they are applying for MRA since this should prove that they are unemployed as a result of the disaster.

3. Public Assistance

Disaster victims can apply for welfare assistance at the Department of Social Services (DSS). Victims can be referred to the local legal aid office. See Section 12.

4. Food Stamps

Advocates should determine whether or not disaster victims with financial problems have enough food. If not, victims can be referred to DSS for food stamps. See Section 11.

5. Small Business Administration (SBA)

The SBA offers two types of business related loans to disaster victims: 1) Business Physical Disaster Loans to repair or replace disaster damage to property, including inventory and business development, and 2) Economic Injury Disaster Loans (EIDL) to help small businesses which suffered economic injury as a result of the disaster. See Section 9. Note that the total of the combined loans cannot exceed $1.5 million. Also note that some banks may make special loans available for disaster victims.

C. Physical Injury or Mental Distress

1. Individual and Family Grant Program, Medi-Cal and County Mental Health Providers

IFGP provides minimal grants for medical and dental expenses which are not covered by other programs. See Section 8. Medi-Cal will cover medical expenses for eligible disaster victims. Psychological services are provided through county mental health care providers.

2. Mental Health Counseling

FEMA may give grants to local established non-profit mental health agencies to provide free counseling to disaster victims.
D. Death of a Family Member

1. Disaster Unemployment Assistance

Available for people who have become the head of household because of a death due to the disaster. See Section 10.

2. Funeral Expenses

IFGP gives grants for funeral, burial or cremation expenses for people who died as a direct result of the disaster. See Section 8.

3. Social Security

The Social Security Administration provides death and survivor's benefits.

Endnotes

1. Applicants "visit" FEMA by going to a Disaster Application Center (DAC) or Disaster Recovery Center (DRC), but usually initiate an application by calling the FEMA teleregistration line at 1-800-462-9029. Depending on the disaster, FEMA will publicize its teleregistration number, and may open DACs or DRCs.

2. IFGP is administered by the state. Although IFGP is interrelated with the two federal programs, FEMA and SBA, it is a separate program.

3. In 1997, it is anticipated that the AFDC program rules will change under a new block grant program established by PRWORA. See Caveat in Section 12.
Overview of FEMA Disaster Individual Assistance Programs Available for Renters and Homeowners

<table>
<thead>
<tr>
<th>Individual Assistance Programs</th>
<th>Renter/Tenant</th>
<th>Homeowner</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Housing Programs (See Sec. 7)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Rental Assistance (RA)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(apply up to 60 days after disaster)</td>
<td>(1) Residence is damaged or uninhabitable because of the disaster (includes utility cut-offs)</td>
<td>(1) Residence is destroyed or is uninhabitable because of the disaster and cannot be repaired within 30 days (includes utility cut-offs)</td>
</tr>
<tr>
<td>(1) Initial</td>
<td>(2) Requires recertification</td>
<td>(2) Requires recertification</td>
</tr>
<tr>
<td>(2) Continuing</td>
<td>b. Renter must receive an eviction notice from the landlord to qualify</td>
<td>b. Homeowner must receive a notice of foreclosure from lender</td>
</tr>
<tr>
<td></td>
<td>(1) Initial certification</td>
<td>(1) Initial certification</td>
</tr>
<tr>
<td></td>
<td>(2) Requires recertification</td>
<td>(2) Requires recertification</td>
</tr>
<tr>
<td>b. Mortgage and Rental Assistance (MRA)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(apply up to six months after disaster)</td>
<td>c. Not available</td>
<td>c. Homeowners are eligible for repairs which can be made within 30 days</td>
</tr>
<tr>
<td>(1) Initial</td>
<td>d. Residence is damaged and paid receipts are required</td>
<td>d. Residence is damaged and paid receipts are required</td>
</tr>
<tr>
<td>(2) Continuing</td>
<td>e. Disaster specific</td>
<td>e. Disaster specific</td>
</tr>
<tr>
<td>c. Home Repair Assistance (HRA)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(apply up to six months after disaster)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d. Transient Accommodations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(reimbursement for lodging up to 30 days)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>e. Government Temporary Housing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(e.g. temporary mobile homes)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. Individual and Family Grant Program (IFGP) (See Sec. 8) (apply up to 60 days after disaster)

| a. Housing repairs | a. Not available | a. Yes |
| b. Personal property | b. Yes | b. Yes |
| c. Automobile/transportation | c. Yes | c. Yes |
| d. Medical/dental | d. Yes | d. Yes |
| e. Flood insurance | e. Limited coverage (See Sec. 13F) | e. Yes |
| f. Funeral expenses | f. Yes | f. Yes |
| g. Moving expenses | g. Yes | g. Yes |

3. Disaster Unemployment Assistance (DUA) (See Sec. 10) (apply up to 30 days after disaster)

| a. Self-employed | a. Yes | a. Yes |
| b. Unemployed because of disaster | b. Yes | b. Yes |

4. Crisis Counseling/Stress Management (See Sec. 5)

| a. Yes | a. Yes |

5. Legal Services (See Sec. 2 and 4)

| a. Yes | a. Yes |

6. Cora Brown Fund (See Sec. 5)

<p>| Yes, if need is not met by another program like IFGP | Yes, if need is not met by another program like IFGP |</p>
<table>
<thead>
<tr>
<th>Individual Assistance Programs</th>
<th>Renter/Tenant</th>
<th>Homeowner</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. American Red Cross (See Sec. 7)</td>
<td>Emergency shelter and food</td>
<td>Emergency shelter and food</td>
</tr>
<tr>
<td>2. Department of Agriculture (USDA)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Emergency Food Stamps (See Sec. 11)</td>
<td>a. Yes</td>
<td>a. Yes</td>
</tr>
<tr>
<td>b. Farm Service Agency (FSA) Emergency</td>
<td>b. Farm owners eligible for loans to cover production and physical losses</td>
<td>b. Farm owners eligible for loans to cover production and physical losses</td>
</tr>
<tr>
<td>Loans (See Sec. 6)</td>
<td></td>
<td></td>
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<tr>
<td>c. Rural Housing Service (RHS) (See Sec. 7)</td>
<td>c. Rental assistance to low-income rural families for rent and utilities</td>
<td>c. Loans and grants to low-income rural homeowners to purchase, construct, improve, repair or relocate residence</td>
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<tr>
<td>(assistance provided is not disaster specific)</td>
<td></td>
<td></td>
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<tr>
<td>3. Department of Housing and Urban Development (HUD)</td>
<td>Section 8 rental assistance, relocation plan for renters already in subsidized or public housing:</td>
<td>Section 203(h) single family mortgage insurance to reconstruct or replace principal residence that was damaged or destroyed by disaster</td>
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<tr>
<td>(See Sec. 7 and 13D)</td>
<td></td>
<td></td>
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<tr>
<td>4. Small Business Administration (SBA)</td>
<td></td>
<td></td>
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<tr>
<td>Loans (See Sec. 9)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Physical disaster loans (apply up to 60 days after disaster)</td>
<td>(1) No, unless lease makes tenant responsible for repairs</td>
<td>(1) Yes</td>
</tr>
<tr>
<td>(1) Home repair</td>
<td>(2) Yes</td>
<td>(2) Yes</td>
</tr>
<tr>
<td>(2) Personal property</td>
<td>b. Yes</td>
<td>b. Yes</td>
</tr>
<tr>
<td>b. Physical disaster loans for businesses (apply up to 60 days after disaster)</td>
<td>c. Yes, if small business</td>
<td>c. Yes, if small business</td>
</tr>
<tr>
<td>c. Economic injury to businesses (apply up to 9 months after disaster)</td>
<td></td>
<td></td>
</tr>
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<td>5. Department of Veterans Affairs (VA)</td>
<td>Information about benefits, pensions and insurance settlements</td>
<td>Information about benefits, pensions and insurance settlements, adjustment for VA-insured home mortgage</td>
</tr>
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<td>(See Sec. 7)</td>
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<td></td>
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<tr>
<td>6. California Housing Finance Agency (CHFA) (See Sec. 7)</td>
<td>Low-interest loans for renters to purchase first home</td>
<td>Lower interest single family home loans for low-income homeowners</td>
</tr>
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<td>7. Aid to Families with Dependent Children (AFDC) (See Sec. 12)</td>
<td>Homeless Assistance Program (HAP) grants to AFDC recipients for temporary and permanent housing assistance OR Non-Recurring Special Needs (NRSN) grant for temporary housing and personal property loss</td>
<td>HAP grants to AFDC recipients for temporary and permanent housing assistance OR NRSN grant for temporary housing, essential home repairs and personal property loss</td>
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<tr>
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<td>Emergency Advance Payments (EAP) for applicants who are proven eligible or presumptively eligible for SSI</td>
</tr>
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<td>Disaster Food Stamps; Replacement Food Stamps; Expedited Food Stamps</td>
<td>Disaster Food Stamps; Replacement Food Stamps; Expedited Food Stamps</td>
</tr>
</tbody>
</table>
Chronology of FEMA, SBA and IFGP Applications

1. REGISTRATION:
A phone call to the Federal Emergency Management Agency (FEMA) toll-free number and written application to the Small Business Administration (SBA) will trigger application to FEMA, SBA and the Individual and Family Grant Program (IFGP). In order to be eligible for an IFGP grant, applicants must complete the FEMA application process, which may not be completed until an IFGP application is available. FEMA may not be eligible for certain IFGP benefits unless they apply for an SBA loan first and are turned down (See Sec. 8). Note that it is crucial for applicants to inform FEMA and SBA about all of their disaster-related hardships. After applicants receive a copy of their completed application, they should inform FEMA, SBA and/or IFGP if there is any other assistance they are receiving or expect to receive. Note there are restrictions for immigrant applicants (See Sec. 5, 7, 136).

Features:
1. IFGP is administered by the state. Although IFGP is incorporated with the two federal programs, FEMA and SBA, there will be separate offices and personnel for FEMA and SBA.
2. Registration with FEMA triggers . . .
3. FEMA inspections:
FEMA inspectors inspect both FEMA and IFGP damage. The IFGP application will be voided if the applicant is denied by SBA. If the applicant is denied by SBA, FEMA will refer the case to IFGP. (See Sec. 7)
4. FEMA grants include:
- Initial Rental Assistance (IRA) for up to 90 days (housing unlivable or area or utility damage due to disaster)
- Continuing IRA for more than 90 days (Reconversion to FEMA)
- Initial Mortgage and Rental Assistance (IMRA) for less than 90 days (eviction or predation notice required)
- Continuing IRA for more than 90 days (Reconversion to FEMA)

5. APPEAL:
Applicants must note that there are distinct appeal rights for each of the disaster assistance programs (FEMA, SBA, IFGP). If the appeal is denied by FEMA, SBA or IFGP, the appeal can be appealed to the higher authority. (See Sec. 5, 7, 136)

Registration with FEMA triggers . . .

FEMA SBA IFGP

IFGP grants include:
- Housing repair grants
- Grants to replace essential personal property
- Grants for moving and storage costs
- Grants for tools necessary for employment
- Automobile replacement or repair grants
- Transportation costs grants
- Medical and dental expense grants
- Funeral expense grants
- Cost of first year food insurance, if required (See Sec. 8)

SBA loans include:
- Loans to replace personal property
- Loans to repair physical damage to home
- Loans to repair physical damage to house office
- Loans for businesses and non-profits to repair or replace damaged real estate, machinery and equipment, inventory and other business assets
- Loans for small businesses that were financially impacted by the disaster, to provide working capital (See Sec. 9)

SBA Inspections:
SBA Inspections: SBA Inspections:

Extra assistance for disaster victims may be available from the five different federal programs, each of which are handled at the five different agencies which administer these programs: FEMA, SBA and IFGP.

AFDC (Aid for Dependent Children) (See Sec. 12)
SSI (Supplemental Security Income) (See Sec. 10)
Food Stamps (See Sec. 11)
DCHA (Disaster Unemployment Assistance) (See Sec. 10)
ARC (American Red Cross) (See Sec. 7)
Section 7: FEMA DISASTER HOUSING ASSISTANCE PROGRAMS

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FEMA DISASTER HOUSING ASSISTANCE PROGRAMS

DISCLAIMER NOTICE-

Please be advised that the following information regarding FEMA disaster assistance programs is designed to provide a general familiarity with the programs as they have been applied in past disasters. FEMA disaster assistance programs are flexible and discretionary in nature. Accordingly, it is strongly recommended that users of this manual verify the following information with FEMA.

OVERVIEW

The purpose of the FEMA Disaster Housing Assistance is to provide assistance to enable households to address their disaster-related housing needs. It is not intended to alleviate chronic housing issues or problems existing prior to the disaster. The assistance is generally provided in the form of a check to the applicant. It is a grant, not a loan, and is not income based although eligibility for some forms of assistance may require an analysis of one’s financial condition. It is not considered as income or as a resource for determining eligibility for federally-funded income assistance or resource-tested benefit programs. It is tax free, exempt from garnishment or levy and cannot be assigned or transferred.2

In 1995, Congress passed legislation3 prohibiting non-emergency disaster assistance for all FEMA DHA Programs (Rental Assistance, Mortgage and Rental Assistance, Home Repair Assistance, and Transient Accommodations) to persons not lawfully present in the United States. Prior law in 1994 had prohibited FEMA from providing Rental Assistance and Mortgage/Rental Assistance for more than 90 days to persons not lawfully present in the United States.

All applicants applying for FEMA DHA (beginning with FEMA-DR-1067, United States Virgin Islands, declared September 16, 1995) will be requested to sign a self-certifying declaration that they are a United States Citizen or National, Lawful Permanent Resident, or are otherwise lawfully present within the United States. See Section 13 E.

In 1996, Section 401 of The Personal Responsibility and Work Opportunity Reconciliation Act4 specified that all persons, regardless of their immigration status, are eligible for short-term, in-kind, non-cash disaster assistance. Moreover, the U.S. Attorney General has the authority to designate certain government-funded community programs or services or assistance necessary for the protection of life and safety for which all persons will be eligible, regardless of immigration status.5 As of the printing date of this publication, FEMA continues to follow the 1995 legislation referenced above for its disaster housing assistance programs. Also, FEMA anticipates amending its definition of "lawful presence" in light of welfare reform legislation. See Section 13E.

FEMA must inform applicants of the types of disaster housing assistance available for the particular disaster.6 For an overview of disaster housing assistance and other individual assistance programs available for renters and homeowners, see the chart at the end of Section 6.

I. EMERGENCY SHELTERS (ADMINISTERED BY AMERICAN RED CROSS)

During the first stage of a disaster, many individuals are left homeless. The Red Cross sets up emergency shelters to house and feed families and individuals. If the disaster destroys permanent homes and apartments, many persons need interim housing. Persons with insurance may obtain temporary replacement housing through their insurance company, or if alternate living expenses (ALE) are not covered or provided, these victims can obtain FEMA assistance. Others move in with family or friends.
II. RENTAL ASSISTANCE (RA)

A. Initial and Continued Rental Assistance

1. Initial Rental Assistance

Rental Assistance (RA) is a grant in the form of a check to enable victims, both homeowners and renters, to rent temporary replacement housing. RA is a tax-free grants program which seeks to shelter victims in the fastest, most economic way possible. It must be used only for disaster-related housing purposes. These include short-term lodging, rent or housing payments.

Eligible homeowners include those whose homes are destroyed or uninhabitable and need repairs which cannot be done in a short period of time and the amount of damages is in excess of an amount established for the particular disaster. For these homeowners the fastest most economical way to put a roof over their heads is to provide them with money that will enable them to rent another place rather than to provide them with money to do the repairs.

Renters and homeowners may be eligible for rental assistance if they suffer disaster-related displacement from their primary residences. Eligible renters include those who have lost their rental and need time to find new housing. Eligible homeowners may also receive assistance based on the Fair Market Rental value calculated for the area.

Initial rental assistance with minimal certification requirements is available to renters and homeowners for one to three months to enable them to find alternate housing.

2. Continued Rental Assistance

For continued assistance, FEMA requires a second stringent verification process. Applicants must request recertification for continued assistance. They must be able to show they have used their initial assistance for appropriate disaster housing related needs and are making reasonable efforts to establish a permanent housing plan. See subsection F, "Continued Rental Assistance-Recertification."

B. Eligibility

One application shall be taken for each household. FEMA generally considers all the persons living in one home or apartment one household. In order for an applicant to be eligible, his/her primary residence must have one of the following conditions:

1. Destroyed or damaged home (damages which are in excess of the maximum Home Repair award, or which make the home unlivable);
2. Utilities cut off;
3. Serious health and safety hazard;
4. Inaccessible residence; or
5. Other disaster-related circumstances which prevent occupancy.

All damage must be to the renter's or homeowner's primary residence.

C. Deadline, Benefit Calculation and Duration

The application deadline is 60 days after the disaster declaration. FEMA calculates benefits on the Fair Market Rent (FMR) for the area and bedroom size appropriate for the size of the family.

FEMA grants initial Rental Assistance as follows, depending on individual household need. Eligible renters normally receive at least one month's FMR. Thereafter, if they cannot find alternate housing, they
must document the need for additional funds for additional months and go through recertification. Homeowners with damaged homes may receive up to three months initial rental assistance before going through a formal recertification process.

If a household receives initial rental assistance but does not move from the damaged residence or use the funds for other disaster-related housing needs, they may be required to return the funds.

Renters generally receive rental assistance for a shorter time period than homeowners under the premise that a renter will normally require less time to find alternate affordable housing than a homeowner will in order to complete major repairs to his/her home. Renters or homeowners who require additional assistance can request recertification.

D. Verification and Documentation

FEMA is very strict about accurate documents and verifications accompanying applications. Meeting FEMA's complex documentation requirement may be a problem for some applicants. If their primary residence was destroyed, applicants may no longer have records. Renters may have problems because their prior landlords may refuse to provide verification of residence. Where multiple families lived together, the names of additional occupants may not appear on a lease. However, applicants should not hesitate to register or apply for assistance if they think they may be eligible.

E. Major Reasons for Denials

There are several major reasons FEMA denies RA grants: failure to establish that home was the pre-disaster primary residence; insufficient damage; lack of proof that the disaster caused serious damage to essential living areas; and lack of proof that insurance did not cover the cost.

1. Primary Residence

The damaged home must be the applicant's residence at the time of the disaster. It includes recently purchased homes or rental units obtained and moved into shortly before the disaster.

**Proof of Primary Residence:** utility bills with applicant's name and address, or other verifiable documents showing primary address. Secondary documentation includes verifiable documentation from landlords who can verify the applicant's address.

2. Serious Disaster-Related Damage to Residence

A FEMA inspector will conduct an on-site inspection of the primary residence with the applicant to assess disaster-related damages. Applicants can point out why their primary residence cannot be lived in safely. They can point out serious damage to the physical structure of the house. Serious damage to plumbing, wiring, heating/cooling, gas, water or sewage disposal must be visible to a FEMA inspector or in a report by a contractor. Basements and garages are not considered essential living areas and consequently are not included in eligibility determinations. Although, many persons may be living in illegal units that are converted garages or basements, if it is their primary residence, they should not hesitate to register or apply for assistance.

Inspectors may miss water damage such as wet wall board, carpeting or concrete which may not appear serious until it begins to mold and mildew. *(Applicants should contact FEMA immediately if they become aware of new or additional damage.)*

3. Insurance Coverage

Homeowners may be required to show that they made every attempt to get reimbursement for temporary housing from their insurance companies. See IV.D. (Insurance Programs). There have
been many problems with insurance coverage during disasters. Some companies refuse to provide coverage for alternate living expenses (ALE). Some insurance companies are non-admitted (out-of-state or offshore) carriers who are undercapitalized or who simply refuse to pay benefits. In past disasters, FEMA denied assistance to an insured homeowner or renter until it had been determined how much (if any) coverage their insurance company would provide. Depending on the applicant's situation, FEMA may grant assistance subject to recoupment (e.g. proceeds from insurance company will be delayed).

**Proof of Insurance coverage**: Copy of policy and coverage, letter denying coverage for housing and relocation costs, letter denying coverage for relatives or renters at the same address, letter confirming delay of benefits, insurance settlement breakdown.

**F. Continued Rental Assistance- Recertification Process**

To obtain continued rental assistance, a household must go through a recertification process. FEMA requests proof of how the household spent the initial RA grant. It requires that the household provide a housing plan to obtain permanent housing. Continued rental assistance may be provided in maximum increments of two to three months per recertification in the amount of the FMR or the actual rent whichever is less.

FEMA will grant Continued Rental Assistance only if:

1. For renters, no affordable alternative housing exists, which includes considerations of distance to work or school;
2. The household is reasonably seeking permanent housing;
3. Verified receipts show that initial RA was spent properly; and
4. A renter who was displaced and suffered a disaster-related reduction of income that can be verified continues to be unable to pay for rent.

FEMA may provide rental assistance for up to 18 months from the date of declaration in increments of one to three months per recertification if there is continuing need.

**G. Additional Benefits: Security Deposits and Essential Furniture**

FEMA issues RA checks directly to renters or homeowners, not to landlords. In most instances, households may not use the RA program to pay for security deposits or replacement of personal property. Security deposits are normally the responsibility of the applicant. However the Regional Director or official designee may authorize such payments when the applicant is unable to obtain the funds to pay the deposit, and the Red Cross or other agencies also sometimes provide this assistance.

When FEMA approves RA for security deposits necessary for obtaining replacement housing, the applicant must repay the money to FEMA when the applicant's rental assistance ends.

Furniture assistance may be provided under Disaster Housing Assistance. It must be specifically requested and a need for furniture demonstrated. This assistance is not be construed as a means to replace damaged furniture, it is solely intended to make the applicant's temporary or permanent residence livable until the applicant's furniture can be replaced through another form of disaster assistance. The grant is generally based on the cost of renting furniture although the funds may be used as a down payment for furniture. This assistance is not considered a duplication of benefits with respect to any subsequent SBA or IFGP award for furniture replacement.
III. MORTGAGE AND RENTAL ASSISTANCE (MRA)\textsuperscript{8}

A. Purpose of Program: Assistance to Renters and Homeowners with Disaster-Related Financial Hardship

FEMA's initial priority is to provide assistance for displaced disaster survivors to obtain safe housing. After this initial need is met through the provision of emergency shelters by ARC, the Rental Assistance program, or the Home Repair Assistance program, FEMA seeks to help homeowners or renters whose pre-disaster homes are habitable but who may lose them because of financial hardships resulting from the disaster.

1. MRA -- In General

Residences are usually habitable as compared to the destroyed/damaged residences of disaster victims seeking RA. To initially qualify for MRA, homeowners or renters must still be living in their pre-disaster residence and have received written, legally enforceable notice of eviction or foreclosure.

2. Qualification for More Than One Program

Recipients of FEMA housing assistance are only eligible for one type of FEMA Disaster Housing Assistance at a time. In certain situations, however, eligible applicants may convert, or may be required to convert, the status of their applications from one form of assistance to another. FEMA, and not the applicant, determines the type of assistance that is most appropriate.

B. Eligibility: Financial Hardship Plus Eviction or Foreclosure

To qualify for Mortgage and Rental Assistance, homeowners and renters must first show that they are suffering financial hardship directly resulting from the disaster. The location of an applicant's residence is not a consideration of eligibility for this type of assistance. In other words, the residence does not have to be within the declared disaster area. The major reason FEMA denies applications for this program is that the applicant cannot demonstrate financial hardship. Applicants must show pre-disaster income that has declined significantly as a direct result of the disaster. Second, they must show that they occupied their primary residence before the disaster. Third, they must have written documentation of the following indicating that the stated grounds for the move to evict or foreclose is due to post-disaster payment delinquency:

1. Renters: eviction notice from landlord
2. Homeowners: foreclosure notice (not just a letter) from a lender.

C. Deadlines and Duration

The deadline for FEMA application for MRA is six months from the date of the disaster declaration. FEMA provides assistance for the duration of the financial disaster or for a period not to exceed 18 months, whichever is less. FEMA provides checks for rent or mortgage payments in amounts covering one to three months at a time per recertification. The initial payment is based on delinquency since the disaster.
D. Verification and Documentation

1. Financial Hardship
   a. Pre-disaster Income

   FEMA defines financial hardship as a disaster-related loss of at least 20% of the applicant's pre-disaster household income and that the applicant's post-disaster monthly mortgage or rent payment exceeds 25% of his/her gross monthly post-disaster household income. Both criteria must be satisfied. Individuals who work in low-paying jobs where they are paid cash may have difficulty proving their pre-disaster income. Low-income persons without bank accounts have similar problems. Destruction of many documents in a disaster may make pre-disaster income difficult to establish. However verifiable documentation must be provided.

   b. Proof of Financial Hardship and Pre-disaster Income:

   Canceled check or check stubs, income tax returns, layoff or termination notices, Board of Equalization quarterly tax statements, Seller's permits, company financial statements, city tax registration certificates, invoice and receipts, signed declarations from former employers. Verifiable documentation must be provided.

2. Pre-disaster Occupancy

   Homeowners and renters must prove that they occupied the premises for which they seek assistance before the disaster and that they continue to occupy the residence. The premises must be their permanent residence. Many renters who share homes or live in substandard residences may have difficulty proving occupancy because they do not have leases or rental agreements.

   Proof of pre-disaster occupancy: utility bills issued within 3 months prior to the disaster and addressed mail to the applicant postmarked within 3 months prior to disaster.

3. Notice of Eviction or Foreclosure

   Renters and homeowners who are unable to pay rent or mortgages frequently receive many letters demanding payment from their landlords or loan holders. These letters or oral demands are insufficient to qualify a household for these FEMA benefits. This makes it difficult for renters or homeowners to qualify for this program. Moreover, there is a problem with timing because once an eviction or foreclosure action is pending, it is difficult to stop.

   It may be dangerous for a renter or homeowner to request a notice of eviction or foreclosure from the landlord or lender because he or she will have to explain his/her financial hardship. In addition, the 6 month application deadline for applying for MRA may run, before the notice arrives or the grant may arrive after the renter is evicted or the homeowner has lost his or her home.

   Often a landlord or lending institution will give a notice of eviction or foreclosure but will hold off in enforcing it if they know that the person is in the process of attempting to obtain FEMA disaster assistance. This decision, however, is up to each individual landlord or lending institution.

   Proof of Eviction or Foreclosure: Notice of eviction, notice of foreclosure. Evidence that the landlord or lender has taken formal legal action to support the intention to evict or foreclose.
4. **FEMA’s Forms**

To assist applicants in obtaining necessary information to determine eligibility, FEMA has created certification forms. These forms are for landlords, building owners, lenders and employers. Applicants must obtain the appropriate forms to verify employment status, income, tenancy and ownership interest.

5. **Recertification**

After an initial payment to enable renters or homeowners to pay an arrearage on rent or mortgage plus an "advance" of two months payments, households must provide additional information to FEMA for recertification for additional assistance.

a. First, the homeowners or renters must prove that financial hardship still prevents them from paying rent or mortgage.

b. Second, they must show proper usage of the FEMA grant.

c. Third, the applicant must demonstrate that he/she has exerted reasonable efforts to re-establish pre-disaster income and that he/she continues to have disaster-related financial hardship. Applicants who were employed prior to the disaster must submit an employment search record and business owners and self-employed applicants must show that they do not qualify for a Small Business Administration Economic Injury Disaster Loan (EIDL) unless they indicate that they do not intend to or can not re-open the business in which case such applicants will be recertified pursuant to pre-disaster employee requirements. Proof requirements of self-employed workers and employees can be found in the chart at the end of Section 7.

IV. **HOME REPAIRS THROUGH HOME REPAIR ASSISTANCE (HRA)**

Disaster survivors obtain cash assistance for home repairs through the Home Repair Assistance Program (HRA). This cash grant program is available if the repairs will: return the home to livable condition; reestablish access to the home; be completed within 30 days.

A. **Eligibility for Home Repair Assistance**

Applicants for this program must be **owner-occupants**. It is available for those applicants who have the legal responsibility for making the repairs to their primary residence. They must need to make repairs to essential living areas. These include the following:

1. Living room
2. Dining room
3. Kitchen
4. One bathroom
5. Bedrooms of residents
6. Windows and doors.

It would not include nonessential areas such as guest bedrooms, additional bathrooms, swimming pool and landscaping. Generally, the repairs must be able to be completed within 30 days. The cost of the repairs must come within a maximum amount which FEMA establishes for each disaster site. The owner must show that insurance will not cover the repairs.
B. Scope of Repairs

The regulations are quite specific. FEMA limits the type of work for which it will pay with these funds. Repairs include those for:

1. Plumbing, electrical systems, heating systems, fuel systems for cooking, septic systems water wells, windows, doors, roofs, interior floors;
2. Blocking, leveling and anchoring mobile homes;
3. Stoves and refrigerators, when feasible;
4. Emergency access repairs; and
5. Elimination of health and safety hazards.

While FEMA will not pay for cosmetic repairs to a structure in and of themselves, it may provide assistance for paint and sheetrock if repairs are required to eligible underlying structural items. FEMA does not provide assistance for repairs to non-essential living areas, such as garages or basements, unless hazards exist in these areas impacting the safety of the essential living area. The grant will not be provided if the damage is a result of deferred maintenance. The funds may not be used to replace personal property. The funds may not generally add previously unavailable utilities to a home; however, FEMA has permitted use of assistance for repairs to bring the damaged elements of a home up to building code standards.

C. Deadline, Amount of Grant, Duration

Owner-occupiers must file an application within 60 days from the date of the disaster declaration.

FEMA bases each grant on the amount of damage verified through a FEMA inspection. It sets cost limits for each item based on the reasonable costs for repair and replacement in the locality.

FEMA generally makes only a one time payment for repairs.

D. Insurance Programs

Many homeowners have fire, flood, earthquake or other specialized insurance that may cover repairs. FEMA may find these applicants ineligible for assistance on the basis that their insurance will cover eligible expenses. However, FEMA regulations provide that insured applicants may be provided with assistance when benefits are significantly delayed, exhausted or insufficient to cover the actual damage. In past disasters involving unique circumstances, FEMA has allowed grants to be used to cover insurance deductibles necessary to complete repairs. Homeowners must agree to repay FEMA if they later obtain duplicate insurance benefits.

E. Interaction With Other Disaster Programs

Home repair grants under the Home Repair Assistance Program for essential repairs differ from assistance available from the Individual and Family Grant Program (IFGP) or the Small Business Administration (SBA) loans for more extensive repairs. A homeowner may be eligible for a Home Repair Assistance grant to cover eligible emergency essential repairs and eligible for a SBA loan to cover more extensive damage. A homeowner whose home has been destroyed, or whose scope of home repairs are too great for FEMA home repair assistance may be eligible for FEMA rental assistance and may be referred to other assistance programs for unmet needs.

FEMA, not the applicant, determines what type of FEMA assistance, if any, is available. Generally only one type of FEMA assistance is available. The purpose of FEMA’s DHA programs is to put a roof over the applicant’s head in the fastest and most economical way. If an applicant’s home has been destroyed and it will take a long time to repair or if the amount exceeds the limits established for the program, then the fastest and most economical way to house the applicant may be to provide Rental Assistance rather than Home Repair Assistance. In such an instance, the applicant should apply for a SBA loan to cover the
repairs. See Section 9. If SBA declines to cover all or part of the repairs, then the applicant may be eligible for IFGP assistance for the repairs. See Section 8. Duplicate payments from insurance or other repair programs may result in recoupment procedures. A comparison chart of Home Repairs, IFGP assistance for home repairs and SBA loans for home repairs, can be found at the end of Section 7.

F. Verification and Documentation

FEMA may require receipts for repair work performed such as in the case of a special Home Repair Assistance program such as the hazard mitigation reimbursement program provided for in the Northridge Earthquake disaster. Otherwise receipts are generally not required unless the applicant is being audited; is requesting assistance for eligible repair items which were not funded; or must otherwise demonstrate exhaustion of benefits.

Households may not receive a grant under this program if they fail to provide essential documentation about insurance coverage; to provide proof that their insurance carrier will not cover the loss claimed or to document that the homeowner has been unable to get payments. The extent of repairs may require funds from a program with greater resources because needed repairs exceed the HR limits. Supporting documents include, but are not limited to:

1. Receipts for repair work already performed;
2. Reports by structural engineers;
3. Estimates on the essential repair work;
4. Insurance reports, letters of delays, denials;
5. Photographs or videos of actual damage; and
6. Denials of assistance from other programs

V. TRANSIENT ACCOMMODATIONS

A. Purpose

The purpose of Transient Accommodations is to reimburse a disaster victim for the cost of short-term lodging up to 30 days, such as hotel rooms, that was incurred because of damage to the home or an official evacuation announcement. Expenditures for food, transportation, telephone, separately billed utilities, and other services are not eligible for reimbursement.

B. Eligibility

The applicant's home must have sustained disaster damage and paid receipts for transient accommodation expenses must be provided.

VI. GOVERNMENT PROVIDED TEMPORARY HOUSING

If FEMA determines that rental housing is unavailable in the local community because of widespread destruction or danger, it may provide government owned or leased temporary housing in lieu of monetary grant awards for rent or home repairs. FEMA is reluctant to do this, but during particularly destructive hurricanes, earthquakes or floods, it has provided government housing, when determined appropriate because adequate rental resources were not available. FEMA may enter into leases when existing rental resources are unavailable or it may provide mobile homes or other manufactured housing.

VII. OTHER HOUSING ASSISTANCE

A. United States Department of Agriculture Rural Development

The United States Department of Agriculture (USDA) Rural Development (RD), formerly known as Rural Economic and Community Development (RECD), administers the Rural Housing Service (RHS). As one
of three distinct services of RD, RHS operates a wide range of programs designed to increase rural housing opportunities and improve residential conditions for low-income rural renters and homeowners through loans and grants for rental assistance, housing construction, rehabilitation and home ownership, as well as the development of essential public service, safety and health care facilities. RHS also assists farmers to build, buy, or repair farm labor housing. These are on-going programs, not specifically for disaster victims, but may be useful after a disaster. Call USDA RD at 916-668-2000 for more information.

B. Veterans Affairs

If a disaster victim has a home loan through the United States Department of Veterans Affairs (VA), s/he may be able to have the loan adjusted. Exact terms are determined on a case-by-case basis. Call the VA regional office where the property is located. The proper regional office should be on the loan papers; if not available, call the VA at 800-827-6551 for the number of the correct regional office.

C. Department of Housing and Urban Development

The Department of Housing and Urban Development (HUD) may offer Section 8 rental assistance and relocation plans for tenants in subsidized public housing, depending on the disaster. Also, HUD provides Section 203(h) single family mortgage insurance for borrowers (homeowners or renters) to reconstruct or replace their principal residence that was damaged or destroyed by a disaster. The application deadline is one year from the disaster declaration date. This mortgage insurance program is administered by the Federal Housing Administration (FHA), a branch of HUD. For more information about either type of assistance, contact a local HUD office.

D. Individual and Family Grant Program

The Individual and Family Grant Program (IFGP) may provide grants to repair the home, to repair or replace household items and home furnishings, and to move and store personal property. See Section 9.

E. Small Business Administration

The Small Business Administration (SBA) offers low-interest loans to repair, replace, or rebuild primary residences to disaster victims. See Section 9.

F. Aid to Families with Dependent Children

Aid to Families with Dependent Children (AFDC) may provide Non-Recurring Special Needs (NRSN) grants to eligible recipients to pay for interim shelter or temporary housing, to make essential repairs to a damaged home owned by an AFDC family, and to move and store personal property. AFDC also administers the Homeless Assistance Program (HAP) which provides temporary and permanent housing assistance to homeless families. See Section 12.

G. California Housing Finance Agency

The California Housing Finance Agency (CHFA) makes available single family home loans with lower interest rates to low-income homebuyers. For example, following the 1994 Northridge earthquake, CHFA offered no-down payment, low-interest mortgages to first-time homebuyers who were renters in the San Fernando Valley area and were displaced from their rental units due to damage caused by the disaster.

Endnotes

1. 42 USC § 5174, 44 CFR § 206.101
2. 44 CFR § 206.101(g)
3. Public Law No. 104-19, § 2006 (Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-Terrorism Initiatives, for Assistance in the Recovery from the Tragedy that Occurred at Oklahoma City, and Rescissions Act, 1995)

4. Public Law No. 104-193


6. 42 USC § 5174(e)

7. 42 USC § 5174(a), 44 CFR § 206.101(g)

8. 42 USC § 5174(b), 44 CFR § 206.101(g)(3)

9. 44 CFR § 206.101(g)(4)

10. 44 CFR § 206.101(g)(4)(iii)

11. 44 CFR § 206.101(f)(1)(ii)

12. 44 CFR § 206.101(g)(1)(ii)

13. 44 CFR § 206.101(g)(1)

14. 44 CFR § 206.101(g)(1)(i)

15. 44 CFR § 206.101(g)(2)
## Proof Requirements for the Recertification of Self-Employed Workers and Employees

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<tr>
<th>Self-Employed</th>
<th>Employees</th>
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<td>1. Proof of payment of rent or mortgage with MRA grant–landlord/lender certification that rent or mortgage has been paid</td>
<td>1. Proof of payment of rent or mortgage with MRA grant–landlord/lender certification that rent or mortgage has been paid</td>
</tr>
<tr>
<td>2. Most recent income tax return</td>
<td>2. Most recent income tax return</td>
</tr>
<tr>
<td>3. Proof of insurance (where applicable)</td>
<td>3. Proof of insurance (where applicable)</td>
</tr>
<tr>
<td>4. Complete financial disclosure for all household members and all income sources</td>
<td>4. Complete financial disclosure for all household members and all income sources</td>
</tr>
<tr>
<td>5. EDD claim/payments, if any</td>
<td>5. EDD payments</td>
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<td>7. Copy of SBA EIDL application to reestablish business</td>
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## Comparison of HR, IFGP and SBA Housing Assistance

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<th>IFGP Home Repairs Program (See Sec. 8)</th>
<th>Small Business Administration (See Sec. 9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time Limit To Complete Repairs</td>
<td>Within 30 days; if audited, applicant will have to provide documentation for proper use of funds</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Purpose of Assistance</td>
<td>Short term repairs to essential living areas</td>
<td>Repair, replace, rebuild</td>
<td>Extensive repairs; replacement of destroyed home</td>
</tr>
<tr>
<td>Amount</td>
<td>FEMA maximum set for each disaster</td>
<td>Grants were $23,100 as of 10/96 (IFGP $13,100 plus state supplemental grant: $10,000)</td>
<td>Repair loans to $200,000; personal property replacement loans to $40,000; Maximum loan: $240,000</td>
</tr>
<tr>
<td>Other Information</td>
<td>Generally one time payment for repairs only</td>
<td>Flood insurance required</td>
<td>If all or part of loan not granted, application will be referred to IFGP; flood insurance required</td>
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Section 8: INDIVIDUAL AND FAMILY GRANT PROGRAM (IFGP)

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INDIVIDUAL AND FAMILY GRANT PROGRAM (IFGP)

OVERVIEW

The Individual and Family Grant Program (IFGP) assists survivors primarily with the repair or replacement of eligible personal property, moving and storage costs, tools, transportation-related costs, medical/dental expenses and eligible housing repairs over $10,000. IFGP is a program of last resort available when disaster survivors do not qualify for other assistance programs.

Please refer to the charts at the end of Section 6 (Chronology of FEMA, SBA and IFGP Applications and Overview of FEMA and Non-FEMA Disaster Individual Assistance Programs Available for Renters and Homeowners), as well as the rest of the information in Section 6 (Key Information for Disaster Assistance Applicants). There is a helpful chart at the end of Section 7 (Comparison of HR, IFGP, and SBA Housing Assistance), and another at the end of Section 12 (Public Assistance and Disaster Assistance Programs for Disaster Victims) that cross-reference IFGP with public assistance programs.

I. THE MECHANICS OF IFGP

A. Application to IFGP

In order to be eligible for an IFGP grant, applicants must complete the FEMA application process, which may require completing an SBA application. If it is not completed, the applicant will not be eligible for an IFGP grant for real property, personal property, tools or transportation.

However, IFGP eligibility for medical/dental, funeral, and moving/storage disaster-related expenses are processed without a SBA application because SBA does not cover or include these costs. Applications that SBA either rejects or grants in part are forwarded to FEMA and if FEMA determines that there are FEMA-eligible damages not covered by SBA, FEMA will refer the case to IFGP. There is a summary denial procedure from the SBA program so applications of low-income people should be expeditiously forwarded from SBA to FEMA and IFGP.

Applicants receiving public benefits or persons fearful about obtaining public benefits should be advised that IFGP is not a welfare program and does not affect eligibility for public benefits such as Aid to Families with Dependent Children (AFDC) (See Section 12), Supplemental Security Income (SSI) (See Section 12), or Food Stamps (See Section 11).

B. Funding for IFGP

IFGP is cost-shared between the federal government and the State of California. As of October 1996, the basic IFGP grant maximum was $13,100. In addition, the State of California may provide up to $10,000 more per household through the State Supplemental Grant Program. The California State Department of Social Services (DSS) administers the program. Grant amounts vary depending on the disaster damage sustained, but most grants are less than $2,000.

Applicants receive checks from the State Controller’s Office in Sacramento. The checks look like welfare checks and include many warnings about fraud.

II. BASIC ELIGIBILITY REQUIREMENTS

An individual or a family, a tenant or a homeowner, who lives in the disaster area and who suffered damage during a disaster should apply for disaster assistance.
A. A Necessary Expense for a Serious Need

FEMA defines a necessary expense as the cost of a serious need which the disaster directly caused. A serious need is "an item or service essential to an individual or family to prevent, mitigate, or overcome a disaster-related hardship, injury, or adverse condition." See Paragraph IV.B.

B. Mandatory Application for All Available Assistance

Applicants must apply for all other forms of assistance that can cover these expenses. This includes obtaining assistance from voluntary agencies for replacement of personal property and clothing and applying for insurance to cover expenses. Applicants must apply for SBA loans for home repairs even if they feel that they will be rejected because of inability to repay a loan.

C. No Refusal of Other Assistance

Applicants who receive money, loans or in-kind contributions from other programs, insurance companies or charitable organizations may not refuse them. Applicants must be found ineligible for SBA loans. Applicants must accept SBA loans if they qualify.

D. No Duplication of Benefits

Because processing times vary, households may receive grants from insurance, charitable organizations or other governmental programs at different times. They must reimburse IFGP when they receive the duplicate payment. For example, IFGP pays for new household furniture. Later a welfare program or insurance policy pays for the identical replacement furniture. The household must repay the State of California for the amount of the IFGP grant.

E. Only One Grant Per Household

A family living in one household may make only one application. FEMA defines a family as legally married individuals, a couple living together as if they were married, a single person with dependents, two or more persons who own a home together and their dependents. However, besides the aforementioned categories, unrelated adults who live together should submit separate applications.

F. Immigration Status

FEMA gives each state the option of using the same declaration process that FEMA uses.

G. Flood Insurance

Applicants who live in a flood plain who wish to replace or repair damaged homes must purchase and maintain flood insurance. If a disaster destroys or damages their home a second time and they have not paid for flood insurance, FEMA will find them ineligible for IFGP funding. A first time IFGP grant can include payment for one year of flood insurance.

III. APPLICATION DEADLINE -- 60 DAYS

The basic deadline for application is 60 days from the date that the President issues the disaster declaration. However, because this is a program of last resort there are two other ways to get FEMA to accept an application:
A. Extenuating Circumstances

Late applicants must show that they were not able to apply because of circumstances beyond their control. FEMA defines extenuating circumstances to include hospitalization, illness or inaccessibility of application centers. If late applicants can prove extenuating circumstances, then they have an additional 30 days to apply.

B. SBA Loans

As mentioned previously, in order to apply for an IFGP grant, applicants must complete the FEMA application process, which may require completing an application to SBA. See Paragraph 1.A. above and Section 6-7. (Note that SBA loans for economic injury have a nine month application deadline, which is much longer than the SBA home and business loan application deadlines.) Applicants should be strongly encouraged to submit a SBA application, even if the deadline has passed. Applicants who cannot afford to repay a loan are eventually forwarded to IFGP. If SBA accepts a late application because of "substantial causes essentially beyond the control of the applicant," then refers the application to the IFGP, then IFGP must accept the late application as well.

IV. IFGP BENEFITS

A. Housing

These grants are available only to owner-occupants for their primary residence. Examples of proof of primary residence include mortgage statements, leases, utility bills with names and address of occupants, driver's license with primary address, declarations from neighbors or the post office. Mobile homes and travel trailers are included if they are the primary residence. Money is available to:

1. Repair, replace or rebuild;
2. Provide access, e.g., repair damaged entry road;
3. Clean or make sanitary;
4. Remove debris; or
5. Provide minimum protection against immediate threat of damage.

FEMA inspectors make initial damage estimates. FEMA issues checks for real property damage not exceeding $10,000. If the damage exceeds $10,000, then the applicant will be referred to IFGP for a real property grant award (if the applicant does not qualify for an SBA loan). See Section 6-7.

B. Personal Property

This grant is available to both tenants and homeowners. The disaster must damage or destroy property which has been designated "necessary." The amount of the grant depends on:

1. Extent of the loss or damage;
2. If repair or replacement is necessary; and
3. The price range DSS has allocated.

The program covers only essential personal property such as clothing, household furnishings, appliances, school books and supplies. Dishes are considered "essential personal property", but crystal is not. Similarly, a winter coat is essential, but a fur coat is not. Items which the disaster victim considers essential may not be so defined by IFGP.
IFGP requires no proof of ownership for personal property. However, verification of disaster-related damage is required.

C. Moving and Storage

This category includes expenses to move personal property out of a damaged home that is uninhabitable. It includes the cost of up to two months of storage during the repair period. Estimates or receipts are essential to obtain this benefit. IFGP covers only the actual cost up to a maximum as provided in IFGP's pricing guidelines. See Paragraph VI. New pricing guidelines are published annually, as a part of the State plan.

D. Tools

This program is available only for employed persons who must provide essential tools or work clothing as a condition of employment. An employer must provide a declaration stating that the tools and clothing were mandatory for employment. Households receive only the amounts that DSS has allocated to each item.

This program is not available to self-employed individuals.

E. Transportation

IFGP provides funds to replace or repair cars, trucks, motorcycles, bicycles, etc. It covers only a vehicle which serves as a disaster survivor's sole means of transportation. In some communities, IFGP will provide funds for public transportation for an extended period of time. IFGP may pay for towing vehicles to repair shops if the repair damages prove to be program-eligible. IFGP will pay for repairs to only one car. However, families may demonstrate special needs including employment, medical reasons or lack of alternative public transportation that necessitate repair of a second car or truck.

Applicants must provide:

1. Proof of ownership, including registration with the Department of Motor Vehicles current at the time of the disaster;
2. One official repair estimate or receipt, or, for a total loss, the salvage value; and
3. Proof of insurance or lack of replacement coverage.

In 1996, the maximum transportation award was $5,000, regardless of the vehicle's value.

F. Medical/Dental Expenses

IFGP covers certain injuries or illness resulting from a disaster which are not covered in other programs -- e.g., Red Cross, VA, health insurance, county mental health. Awards can cover medical and dental treatment including surgery, hospitalization, medication and psychiatric services. However, psychiatric services are usually covered through county services. They also cover durable goods such as wheelchairs, prostheses, eye glasses, dentures and prescription drugs. Note that IFGP will only cover medical/dental needs that arose directly from the disaster. The Program will not cover pre-existing needs.

Proof of expense includes receipts or written estimates of cost of treatment, statements from insurance companies showing amount of coverage or lack of coverage, and statements from physicians, psychiatrists or dentists documenting disaster-related injury or need for treatment.
General Assistance/General Relief recipients are specifically precluded from receiving any medical or dental benefits from IFGP. The assumption is that they can obtain free care from a county facility.

G. Funeral Expenses

IFGP pays the funeral expenses of household members who died as a direct result of a disaster. The grant will cover services, burial costs and/or cremation. The maximum grant per household in 1996 was $6,000 for burial and $2,500 for cremation, per household.

Necessary verification includes a death certificate or coroner’s report, receipts or written estimates for funeral, interment or cremation.

H. Flood Insurance

For homeowners in a flood area, IFGP will pay the first year’s premium of flood insurance through the National Flood Insurance Program (NFIP). Owners must purchase and maintain the insurance in order to qualify for IFGP in the event of destruction or damage in another disaster. For information about the NFIP, call 1-800-638-6620.

I. Cost Estimates and Other Necessary Expenses

In some cases, IFGP funds are available to pay for estimates from doctors, dentists, funeral directors and vehicle repair shops (with appropriate documentation) for damage necessary to determine eligibility. Estimates for appeal purposes are excluded. Any necessary expense not included in another category is included under “other.” Applicants must prove both the necessity for, and the cost of, the expenditure.

J. Limits on IFGP Spending and Duplication of Benefits

Households must spend IFGP funds only on the category for which FEMA designates them. If a household spends the money on other needs, it must refund any part of the grant improperly spent. For example, a household receives IFGP funds for home repairs and spends the money on mortgage payments. FEMA will require the household to repay the grant.

In addition, households that receive payment from other sources after having spent IFGP funds must repay the portion of the IFGP grant that covered the same category of need. For example, IFGP provides money to replace essential clothing. Later, insurance also pays for clothing replacement. The household may have to repay FEMA/IFGP. However, if the total IFGP-eligible expenses exceed the IFGP grant and the insurance payment, then the household need not repay.

Any household that receives benefits should keep all receipts and records for at least three years. FEMA conducted grant audits from the 1994 Northridge Earthquake in the beginning of 1995 while it was providing new grants during the 1995 Winter Storms.

V. ITEMS NOT COVERED BY IFGP

These include business losses, improvements and additions to property, landscaping, recreational property, luxury and decorative items and debts owed prior to the disaster.

VI. CALCULATION OF BENEFITS

DSS annually establishes a pricing guide for necessary items. The amount of the grant depends on the extent of damage or loss, whether items can be repaired or must be replaced. DSS requires written receipts or estimates. IFGP grants have a fixed maximum for any category, regardless of the actual loss.
Examples of maximum grants in different categories from the 1995 Winter Storms were:

<table>
<thead>
<tr>
<th>Category</th>
<th>Maximum Grant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Essential clothing</td>
<td>$900</td>
</tr>
<tr>
<td>Furnishings: living room</td>
<td>$1,100</td>
</tr>
<tr>
<td>Appliances: range</td>
<td>$160</td>
</tr>
<tr>
<td></td>
<td>replacement</td>
</tr>
<tr>
<td>Transportation</td>
<td>$5,000</td>
</tr>
</tbody>
</table>

IFGP annually submits a state plan containing pricing guidelines to FEMA for approval.

VII. INSPECTION PROCESS

FEMA conducts inspections for IFGP, as well as for the FEMA housing assistance programs. There may also be separate inspectors from the IFGP. See Section 6-7. A FEMA inspector makes the initial assessment about damage to the home and/or to personal property. The inspection report establishes the basis for eligibility and the amount of the grant. It is important for applicants to review the report for accuracy. IFGP may perform a re-inspection if it appears as if the initial inspection reported insufficient information.

Those denied assistance or who disagree with the amount granted must file an appeal with the resource agency within **60 days**. See Paragraph VIII.C.

VIII. DENIALS AND APPEALS

A. Problems on Appeal

In past disasters, applicants have had numerous problems with the federal disaster assistance process. First, the requirement that low-income households apply for Small Business Administration loans created problems for individuals with limited education or limited English skills. Many of these persons were unable to complete the forms and, therefore, never qualified for IFGP. Second, the grant levels were insufficient to meet the needs of disaster victims. Although the maximum grants in different categories appear generous, the actual grants were quite limited and failed to cover the actual expenses of survivors. Price gouging after a disaster exacerbated the problem because survivors had to pay more for many essentials. Third, inspectors frequently failed to mention all the items damaged; for example, they did not check water heaters or appliances. These problems became issues raised on appeal to DSS or FEMA.

B. Basis for Appeal

An applicant can file an appeal if:

1. The application was denied;
2. A grant or FEMA estimate for housing and property losses is too low to cover actual costs;
3. An inspection misses damage to property;
4. A grant is for less than the maximum award in any category, but the actual household need is greater;
5. The grant is withdrawn; or
6. New information is available.
C. Written Appeal Letter and Documentation

Applicants must **postmark** appeals **within 60 days of the date on the IFGP Notification**. They must include in the letter proper identification of the denial, including the Application/Control number from the notice, and documentation to support the appeal to:

**Individual and Family Grant Program**
Department of Social Services
Disaster Response
744 "P" Street, MS 19-43
Sacramento, CA  95814
Attention: Appeals Officer

The letter should include the following:

1. Categories of assistance appealed;
2. Reasons for disagreement with the decision; and
3. Copies of documentation that support the appeal.

The appeals process must allow written evidence, a determination based on the record, and a decision by an impartial person or board.

**Endnotes**

1. 42 U.S.C § 5178, 44 CFR § 206.131.
2. 44 CFR § 206.131 (b).
3. 44 CFR § 206.131 (c)(1),(2).
5. 44 CFR § 206.131 (d)(2).
6. 44 CFR § 206.131 (d)(3).
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U.S. SMALL BUSINESS ADMINISTRATION
DISASTER LOAN PROGRAM

OVERVIEW

Low-interest loans from the U.S. Small Business Administration (SBA) are the primary form of federal assistance for long-term recovery for homeowners, non-profit organizations, renters and non-farm businesses of all sizes. These SBA loans fund repair of damages to private property not fully covered by insurance. Loans may also include funds for mitigation measures to minimize damage from future disasters of the same kind. 15 U.S.C. 636(b), 13 CFR Part 123.

By making affordable loans, the SBA disaster program helps disaster victims pay for repairs while keeping costs to the taxpayer reasonable. If SBA analyzes the income and debts of a homeowner or renter and determines that the disaster victim cannot afford an SBA disaster loan, SBA will automatically refer the applicant to the Individual and Family Grant Program for possible grant assistance. See Section 8. Please refer to the charts at the end of Section 6 (Chronology of FEMA, SBA, and IFGP Applications and Overview of FEMA and Non-FEMA Disaster Individual Assistance Programs Available for Renters and Homeowners). There is also a helpful chart at the end of Section 7 (Comparison of HR, IFGP, and SBA Housing Assistance), as well as the checklists and advice in Section 6.

Businesses of all sizes and non-profit organizations may apply for low-interest SBA disaster loans to fund repairs or replacement of real estate, machinery and equipment, inventory and other business assets. These loans are available for losses not fully covered by insurance. For small businesses only, SBA also makes Economic Injury Disaster Loans (EIDLs) to provide working capital to pay necessary obligations until operations return to normal after the disaster. (The definition of a "small" business is provided in the Standard Industrial Classification manual.) These working capital loans are available to businesses financially impacted by the disaster, even if they had no property damage. EIDLs are also available to small businesses located in counties contiguous to the declared counties.

SBA personnel are available to assist with completing application forms at no charge. For more information, disaster victims may call the SBA Disaster Assistance information line at 1-800-488-5323.

I. THREE MAJOR DISASTER ASSISTANCE PROGRAMS

A. Home Disaster Loans

SBA disaster loans are available to homeowners to repair or replace disaster damages not fully covered by insurance to real estate and personal property owned by the victim. Renters are eligible for personal property loans. The application deadline for home disaster loans is 60 days from the disaster declaration date.

SBA disaster loans of up to $200,000 are available to homeowners for real estate repairs to their primary residence to return the property to its pre-disaster condition, and up to $40,000 to replace personal property such as furniture, household items, personal items and automobiles. The amount of money that SBA can loan depends on the actual cost of repairing or replacing the damage, less insurance recovery, grants, etc. If SBA analyzes the income and debts of the homeowner and determines that the disaster victim cannot afford an SBA disaster loan, SBA will automatically refer the applicant to the Individual and Family Grant Program. See Section 8.

Renters are eligible for personal property loans of up to $40,000 to replace personal property such as furniture, household items, personal items and automobiles. If SBA analyzes the income and debts of the renter and determines that the disaster victim cannot afford an SBA disaster loan,
SBA will automatically refer the applicant to the Individual and Family Grant Program. See Section 8.

1. **Eligibility**
   
a. Applicants must have owned the damaged property at the time of the disaster and
b. All physical losses or damages to real or personal property must have been as a direct result of the disaster.

2. **Limitations and Conditions**

   These loans may not be used to:
   
a. Repair or replace secondary residences or vacation properties;
b. Repair or replace recreational vehicles, luxury items, etc.; or
c. Upgrade or make additions to the home, unless required by building codes.

   SBA requires that borrowers maintain receipts and records of all loan expenditures for three years. **If SBA determines that the loan has been misused, borrowers must repay one and a half times the original amount of the loan.**

3. **Verification and Documentation**

   Applicants must provide the following information with the loan application, or after the application has been approved:
   
a. Social Security number;
b. Deed of trust for homeowners or title if the home is a manufactured home;
c. Rental or lease agreement for renters;
d. Internal Revenue Service Form 8821 (authorization for SBA to obtain Federal Tax Returns);
e. Itemized list of personal property loss with estimates of repair or replacement costs;
f. Copy of insurance settlement or denial, adjuster's proof of loss or schedule of coverage if claim has not been settled;
g. Vehicle registration, if applicable; and
h. Current pay stub if employment changed within the past two years.

   After an applicant submits a loan application, an SBA loss verifier will inspect the property to determine the cost of repairs. SBA loan amounts are based on this inspection. The time frame between submission of loan application and inspection will vary, depending on the size of the disaster. Generally, for small disasters, the inspector will come within a few days. The time frame will be significantly longer for large disasters.
4. Credit Requirements
   a. SBA's disaster assistance is in the form of low-interest loans. Applicants must show a reasonable assurance of their ability to repay all loans and must demonstrate a reasonable assurance that they will comply with the terms of a loan agreement, based upon their credit history (as reported by a credit bureau).
   b. Applicants must not be delinquent on a federal debt obligation or child support payments.

5. Collateral Requirement

Collateral is required for all physical loss loans over $10,000. SBA takes real estate as collateral where it is available. Applicants do not have to have full collateral; SBA will take what is available to secure each loan. However, if a borrower refuses to pledge collateral, SBA may decline a disaster loan for that reason.

6. Term of Loan

The law authorizes loan terms of up to a maximum of 30 years. SBA determines the term of each loan in accordance with the borrower's ability to repay the loan. Based on the financial circumstances of each borrower, SBA determines an appropriate installment payment amount which, in turn, determines the actual term of the loan. Generally, the first payment on disaster loans is not due until five months after the date of the loan.

B. Business Physical Disaster Loans

Businesses of all sizes and non-profit organizations may apply for low-interest SBA disaster loans to fund repairs or replacement of damaged or destroyed real estate, machinery and equipment, inventory and other business assets. These loans are available up to $1.5 million for losses not fully covered by insurance. The application deadline is 60 days from the disaster declaration date.

1. Eligibility
   a. Applicant must have been the owner of the damaged property, or was a commercial tenant or a non-profit organization responsible for the damage at the time of the disaster;
   b. All physical losses or damage to real property must have been caused by the disaster; and
   c. Applicant must have the ability to repay the loan.

2. Verification and Documentation

The following information must be provided with the loan application, or after the loan application has been approved:

   a. Deed of trust, mortgage, lease or rental agreement;
   b. Brief history of the business;
   c. Personal and business financial statements;
   d. Internal Revenue Service form 8821 (authorization for SBA to obtain Federal Tax Returns);
e. Itemized list of losses with estimates of repair or replacement costs; and
f. Copy of insurance settlement, adjuster's proof of loss or schedule of coverage if claim has not been settled.

3. **Credit Requirements**

   a. SBA's disaster assistance is in the form of low-interest loans. Applicants must show a reasonable assurance of their ability to repay all loans and must demonstrate a reasonable assurance that they will comply with the terms of a loan agreement, based upon their credit history (as reported by a credit bureau).

   b. Applicants must not be delinquent on a federal debt obligation or child support payments.

4. **Collateral Requirement**

Collateral is required for all physical loss loans over $10,000. SBA takes real estate as collateral where it is available. Applicants do not need to have full collateral; SBA will take what is available to secure each loan. However, if a borrower refuses to pledge collateral, SBA may decline a disaster loan for that reason. For businesses, personal guarantees of the principals may be required.

5. **Term of Loan**

For businesses that are unable to obtain credit elsewhere, the maximum term is 30 years. Maturity dates and installment terms are determined by the borrower's needs and ability to repay. However, for businesses with credit available elsewhere, the law limits the loan term to a maximum of three years.

C. **Economic Injury Disaster Loans**

For small businesses only, SBA also makes Economic Injury Disaster Loans (EIDLs) of up to $1.5 million to provide working capital to pay necessary obligations until operations return to normal after the disaster. These working capital loans are available to businesses financially impacted by the disaster, even if they had no property damage, and are also available to small businesses located in counties contiguous to the declared counties. EIDL assistance is available only to applicants with no credit available elsewhere; this means that the business owners cannot provide for their own recovery from non-government sources as determined by SBA. The application deadline is nine months from the disaster declaration date.

1. **Eligibility**

   a. Applicant was owner of the property or the commercial tenant responsible for damage at the time of the disaster;

   b. Applicant has the ability to repay the loan; and

   c. A change in the financial condition of the business due to the disaster renders the business unable to pay its debts and ordinary and necessary operating expenses (a lack of profit or loss of anticipated sales is not enough).

2. **Verification and Documentation**

The following information must be provided with the loan application, or after the loan application has been approved:
a. Deed of trust, mortgage, lease or rental agreement;
b. Brief history of the business;
c. Personal and business financial statements;
d. Internal Revenue Service form 8821 (authorization for SBA to obtain Federal Tax Returns);
e. Itemized list of losses with estimates of repair or replacement costs;
f. Copy of insurance settlement, adjuster's proof of loss or schedule of coverage if claim has not been settled; and
g. Balance sheets and operating statements for comparative periods of time.

3. Credit Requirements

a. SBA's disaster assistance is in the form of low-interest loans. Applicants must show a reasonable assurance of their ability to repay all loans and must demonstrate a reasonable assurance that they will comply with the terms of a loan agreement, based upon their credit history (as reported by a credit bureau).
b. Applicants must not be delinquent on a federal debt obligation or child support payments.

4. Collateral Requirement

Collateral is required for all EIDL loans over $5,000. SBA takes real estate as collateral where it is available. Applicants do not need to have full collateral; SBA will take what is available to secure each loan. However, if a borrower refuses to pledge collateral, SBA may decline a disaster loan for that reason. Personal guarantees of the principals may be required.

D. Statutory Loan Limits

The $1.5 million statutory limit for business loans applies to the combination of physical and economic injury, and also applies to all disaster loans to a business and its affiliates. If a business is a major source of employment, SBA has the statutory authority to waive the $1.5 million limit.

II. SBA LOANS AND OTHER ISSUES

A. Referral to Individual and Family Grant Program (IFGP)

A homeowner or renter who has applied for an SBA loan may be referred to IFGP for a grant if SBA determines that the applicant is unable to qualify for an SBA loan. In situations where the borrower cannot repay a larger loan, SBA may refer the applicant to the IFGP for a grant to supplement a lower SBA loan. The referral is automatic. There are no additional applications which need to be made by the applicant. The IFGP program is available only to homeowners and renters. See Section 8.

If an applicant qualifies for an SBA loan and refuses to accept the loan, the applicant will not be referred to IFGP.

B. Insurance

Applicants do not have to wait for their insurance settlement before applying for an SBA loan. SBA can lend them the full amount of their damages (up to the lending limit) even before they receive their insurance recovery. Then SBA can use the insurance funds to reduce the balance of their disaster loan.
Insurance proceeds that are required to be applied against outstanding mortgages may be included in disaster loan eligibility. Insurance proceeds that are voluntarily applied against outstanding mortgages by the owner may not be included in disaster loan eligibility.

Applicants who did not comply with the terms of previous loans or who did not maintain required flood insurance for the insurable value of the property are ineligible for an SBA loan.

Borrowers are required to maintain appropriate insurance coverage for the life of the loan.

C. Interest Rates

Interest rates are determined by formulas set by law, and may vary over time with market conditions.

The laws that govern the disaster loan program require the SBA to determine whether credit is available elsewhere to all disaster loan recipients from non-government sources in the amount needed to effect full repairs, without creating an undue financial hardship. Accordingly, the availability of sufficient credit (based on cash flow and available assets of the applicant) from non-government sources on reasonable terms and conditions is determined through a comprehensive analysis of all the financial information submitted for consideration. This test is uniformly applied to all disaster loan recipients. Generally, SBA determines that more than 90% of disaster loan applicants do not have credit available elsewhere.

As of July 31, 1997, the applicable interest rates are:

<table>
<thead>
<tr>
<th></th>
<th>No Credit Available</th>
<th>Credit Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Home Loans</td>
<td>4.000%</td>
<td>8.000%</td>
</tr>
<tr>
<td>Business Loans</td>
<td>4.000%</td>
<td>8.000%</td>
</tr>
<tr>
<td>Non-Profits</td>
<td>4.000%</td>
<td>7.125%</td>
</tr>
<tr>
<td>EIDL</td>
<td>4.000%</td>
<td>n/a</td>
</tr>
</tbody>
</table>

Call SBA at 1-800-488-5323 to inquire about current interest rates.

D. Immigration Status

SBA does not require proof of immigration status. Please note, however, that Social Security numbers are required for disaster loans.

E. Reconsiderations and Appeals of Declined Applicants

Applicants who are denied an SBA loan can request a reconsideration in writing within six months of the decision denying the loan. The request must explain why the decision is wrong and include any new information which supports the request. For example, the applicant may have increased his/her ability to repay the loan. Perhaps the applicant's income rose or the applicant refinanced his/her home. The notification letter will provide instructions on who to send the request to and where to send it.

If the request for reconsideration is denied, a written appeal may be filed within 30 days. The appeal should address the reasons for denial, listed in the denial letter. After the appeal is submitted, it may be amended with further information. The appeal should be sent to:
The decision on the appeal is **final**.

**F. Refinancing**

SBA can refinance all or part of prior mortgages, evidenced by a recorded lien, when the applicant:

1. Does not have credit available elsewhere;
2. Has suffered substantial damage (40% or more of the value of the pre-disaster fair market value of the property); and
3. Intends to repair the damage.

Refinancing of prior debts improves the victim's ability to afford the SBA disaster loan.

**G. Mitigation Measures**

SBA can provide additional low-interest loan funds to homeowners and business owners to assist with the cost of constructing preventive measures. These funds may be available in addition to the amount loaned to repair damages caused by this disaster. The maximum additional loan amount is limited to 20 percent of the loan amount for damages.

**H. Loan Modifications**

Loans can be modified if the borrower can substantiate in writing a change of circumstances which affects ability to repay, or justify a change in the purpose of the loan.
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DISASTER UNEMPLOYMENT ASSISTANCE

OVERVIEW

Disasters cause damage to work places and injury to workers. In addition to losing home and property, survivors may lose their jobs. They need advice about disaster assistance, wages, benefits and other employment rights. Without this assistance, many may become homeless. Disasters also impact the self-employed. Survivors without income frequently encounter serious financial problems. Refer to Section 13C for a summary of general employment issues.

I. DESCRIPTION OF DISASTER UNEMPLOYMENT ASSISTANCE (DUA)


DUA provides funds to individuals who are ineligible for regular unemployment insurance.

DUA is a federal program funded by FEMA. The Department of Labor (DoL) and the California Employment Development Department (EDD) administer the program. Individuals apply for disaster relief in the same manner as they apply for regular Unemployment Insurance (UI), i.e., at their local EDD office, or, where available, by telephone or electronically. (For the phone number of the local EDD office, look in the State government listings in the White Pages of the phonebook.) In addition to unemployment insurance, disaster survivors are eligible for local employment services.

II. ELIGIBILITY

A. In General

After the President declares a major disaster, DUA becomes available to any unemployed worker or self-employed individual who lived, worked or was scheduled to work in the disaster area.

The unemployment must be a direct result of the disaster. Several categories of precondition qualify a worker. The worker:

1. No longer has a job or a place to work;
2. Cannot reach the place of work;
3. Cannot work due to damage to the place of work;
4. Cannot work because of injury caused by the disaster; or
5. The head of household died and another individual becomes the major support of the household and is seeking work.

To qualify for DUA a claimant must not be entitled to any other UI, to waiting period credit for UI or to state disability insurance. The claimant may not be under a disqualification from a previous application for UI benefits, unless the claimant has found intervening work and has lost his/her most recent job because of the disaster. The claimant must accept suitable jobs offered and must conduct a job search while receiving DUA.

DUA is not based on need. This program provides a weekly income to individuals who are out of work through no fault of their own.
B. Unemployed Workers

Individuals who are unemployed as a direct result of the disaster are eligible for DUA if they are not eligible for regular unemployment benefits or other wage replacement payments.

Employees must have been employed or about to begin employment in the disaster area at the time of the disaster. The job must have been the primary source of income for the individual.

C. Unemployed Self-Employed Individual

DUA is available to any individual who is self-employed or about to be self-employed in the disaster area at the time of the disaster. Self-employed for DUA means that the individual’s principal source of income was from the performance of services by the individual in the individual’s own business or on the individual's own farm.

Individuals qualify if they are unable to work, unable to reach the work place or cannot provide services because of a disaster-related injury.

For the self-employed, EDD uses net earnings, as well as any wages, to establish the DUA amount. If the self-employed individual had no net earnings or a net loss from self-employment activities, the individual will be paid the minimum DUA weekly benefit.

Past income during the individual's base period determines benefits. The greater one's income, the greater the DUA benefit.

D. Farm Workers

Disasters frequently prevent migrant farm workers from performing their customary agricultural work. When the workers are in one state, and disaster strikes in the state to which they are moving or plan to move, they may be eligible for UI benefits. Workers who obtain regular UI benefits are not eligible for DUA. However, some farm workers are not eligible for regular UI because, for example, they are:

1. Not covered by UI or
2. Not monetarily eligible for UI.

Both of these categories of farm workers may be eligible for DUA. They may file their claims on an interstate basis (i.e., in their home states).

E. Immigration Issues

Individuals who file claims for UI or DUA benefits must indicate their immigration status. Individuals must be able to present proof of INS work authorization. EDD requires proof of work authorization for the period during which the individual is collecting DUA and for the past "base period." Persons who are undocumented and without work authorization are not able to obtain benefits.

F. Injured Workers

1. Disaster-Related Injuries

DUA, in contrast to regular UI, allows workers injured as a result of a disaster to collect benefits. This includes injuries at the work place or anywhere else.
2. **Nondisaster-Related Injuries**

Nondisaster-related injuries may qualify an individual for state disability, workers' compensation or other insurance programs, but not DUA. State disability is for nonwork-related injuries, illnesses or medical procedures. Workers’ Compensation is for work-related injuries that are a result of working conditions. Just because the injury happened during the disaster period does not mean it was disaster-related.

3. **Mental Stress**

Injuries include mental stress related to the disaster. Claimants who claim injury based on mental stress must provide a doctor's verification of the condition and that the condition was caused by the disaster. Persons who suffer from stress and do not have medical insurance to pay for treatment may get funds through the Individual and Family Grant Program (IFGP). See Section 12-6. FEMA also provides on-site crisis counseling for mental health assistance at Disaster Application Centers and one-on-one counseling for seriously ill persons.

### III. DEADLINES, BENEFIT PERIOD

Applicants must apply for DUA within **30 days** of the announcement of the disaster declaration and of the availability of DUA. (Usually this is computed from the date that EDD sends out a press release announcing the availability of DUA.)

Applicants who have good cause can file late applications for DUA, although not after the Disaster Assistance Period has ended. A worker whose disaster-related unemployment is delayed until more than 30 days after the disaster may have good cause for filing a late application for DUA. (For example, a farm worker who usually would not report to work to harvest strawberries until April may have good cause for filing a DUA application in April, even though the floods which destroyed the strawberry crop he would have harvested occurred in January and the 30-day deadline for DUA applications was therefore in February.)

DUA benefits are payable for 26 weeks. This is called the **Disaster Assistance Period**. It begins with the first week following the date of the disaster and ends 26 weeks later. Individuals cannot apply for DUA after the end of the Disaster Assistance Period.

Both the regional DoL office and EDD usually publish Fact Sheets for each disaster, listing the application deadlines, Disaster Assistance Period, etc. Information and copies can usually be obtained from the DUA Specialist at EDD in Sacramento and from the Unemployment Insurance Specialist, Employment and Training Administration (ETA), U.S. Department of Labor Regional Office in San Francisco. The latter will also usually provide copies of DoL Unemployment Insurance Program Letters, which clarify and interpret the DoL regulations. (Look in the government pages of the White Pages of the phonebook for the phone numbers of these agencies.)

### IV. BENEFIT CALCULATIONS AND AMOUNTS

DUA is paid just like unemployment insurance, with a weekly check. EDD computes DUA benefits using the same method it uses to compute UI benefits. It calculates the amount of each check based on the amount earned during a "base period". For DUA, the base period is the individual's most recent tax year, which for most taxpayers will be the calendar year preceding the disaster.

For **employees**, DUA benefits are computed based on wages earned during the most recent tax year. For **self-employed** individuals, DUA benefits are computed on the basis of the net income from **services** reported on the individual's tax return for the most recent tax year. In the case of a family business, the net income is divided evenly among all the adult family members regularly working in the business, unless the family members submit documentation supporting a different allocation of income.
DUA benefit amounts are calculated using the same formula as for regular UI, based on the amount earned during the highest quarter of the DUA base year. (See Unemployment Insurance Code § 1280.) However, no claimant will receive DUA benefits which are greater than the maximum regular UI benefit payable in the state. (The maximum weekly UI benefit in California in 1996 is $230/week.) Nor will anyone who is eligible for DUA receive less than the minimum DUA benefit, which is 50% of the average weekly UI payment in the state. (In California, the average weekly payment during 1996 was between $150-$155/week, so the minimum DUA benefit would have been slightly over $75/week.)

The minimum DUA benefit is paid to individuals who provide documentation of eligibility for DUA but not of earnings or net income, and to those who are eligible for DUA because they were prevented from future employment or self-employment because of the disaster but who have no earnings or income during the DUA base period.

DUA benefits are reduced proportionately for employees or self-employed individuals who customarily or routinely worked less than full time prior to becoming unemployed due to the disaster.

V. PROOF OF ELIGIBILITY, WAGES AND INCOME

EDD makes an immediate determination of: 1) Eligibility for DUA and 2) base period earnings or income when the individual applies for DUA. This determination is made on the basis of documentation provided by the applicant and information in EDD records. If the individual has no documentation, EDD makes an immediate determination based on the applicant's Statement of Employment or Self-Employment.

An individual who does not present documents at the time of application for DUA has 21 days to provide such documentation. If the individual does not present documentation of eligibility during that time, s/he will be declared ineligible for DUA and an overpayment will be declared. If the individual presents documentation of eligibility but not documentation of earnings or income, s/he will receive the minimum DUA benefit.

Individuals who do not present sufficient documentation within 21 days have until the end of the Disaster Assistance Period to submit documentation or additional documentation, at which time EDD will redetermine their eligibility and award benefits or higher benefits retroactively, if appropriate.

Examples of documentation include:

A. Employees

Employees may prove their wages and/or eligibility with the following documents:

1. W-2 form
2. Income tax return or preparer's copy of same;
3. Check stubs/pay slips;
4. Other documents (e.g., statement from employer with wage information or a computerized printout of employer's wage documents submitted to EDD); or
5. Bank records.

B. Self-Employed

Persons who are self-employed may submit:

1. IRS Schedule C;
2. Business license;
3. Profit and loss statements;
4. Tax returns or preparer's copies;
5. Documents from accountants;
6. Work orders or receipts;
7. Form 1099; 
8. Statement from bank verifying business account or payroll deposit account; or 
9. Copy of deed or title to property.

VI. DUA LIMITATIONS

Under the regulations, weekly payments are reduced if the claimant receives any of the following benefits:

A. Partial earnings from work; 
B. Insurance payments due to illness or disability (this includes workers' compensation, disability insurance or lost wages covered under various insurance policies); 
C. Benefits from a union or as the result of a union agreement; or 
D. Private income protection insurance.

VII. EFFECT OF TRADITIONAL UI DISQUALIFICATIONS

A. Able and Available for Work

Under traditional unemployment insurance, injured workers are not eligible for UI because they are not "able and available" for work. Injured workers usually receive workers' compensation or state disability benefits. However, in case of a disaster, persons injured due to the disaster are eligible for UI benefits. If the injury is not disaster-related, the person remains ineligible.

A worker can also get DUA if s/he is unable to reach the work place because of the disaster. Traditionally, such a worker would be disqualified because the job still exists, or, in other words, the job is available. For example, if the disaster destroys a worker's car or if the disaster destroys an essential bridge to the work place, the worker is eligible. However, the access problem must be caused by the disaster, not the employee's negligence.

B. Voluntary Quit or Termination for Misconduct

If an employee was disqualified from UI benefits because s/he had voluntarily quit or was terminated for misconduct from her previous job during the base period, s/he may still be eligible for DUA. However, s/he must show that s/he obtained new employment and that s/he lost this new job due to the disaster. This also applies if s/he was about to get a new job when the disaster struck.

VIII. DENIALS AND APPEALS

A. Reasons for Denials

An applicant who is denied benefits has a right to appeal. The major reasons for denials revolve around two types of problems. First are traditional UI reasons for denials such as voluntary quits, able and available for work, termination from employment for misconduct, etc. Second are procedural issues regarding the disaster such as timely filing for benefits, employment or self-employment status, earnings records and inadequate verification of job status or wages. An individual is not entitled to DUA if s/he is under a disqualification (unless the individual has obtained intervening employment which s/he has lost due to the disaster), has excessive disqualifying income, is employed and earning more than the weekly benefit amount, or is not able and available to work.
B. Appeals Process

1. First Stage

Appeals must be filed within 60 days of the date the notice of denial is issued or mailed. In California, claimants are entitled to a face-to-face hearing before an administrative law judge (ALJ). They may present evidence, subpoena records and cross-examine witnesses.

For DUA, the ALJ must make and issue a decision within 30 days from the date the appeal is received. Notice of the decision must be personally delivered or mailed (whichever is most expeditious) to the claimant. Notice of the decision is also given to EDD and to the Regional Administrator, Employment and Training Administration, U.S. Department of Labor.

2. Second Stage

To appeal the decision of the ALJ regarding DUA, appeals are made to the Regional Administrator, ETA, U.S. Department of Labor. (The Regional Office for California is in San Francisco.) This appeal must be made within 15 days of the date the ALJ decision is mailed or delivered in person to the claimant. The appeal may be filed directly with the Regional Administrator, or with EDD for forwarding to the Regional Administrator. The Regional Administrator must make a decision within 45 days of the date the claimant filed the second stage appeal, or within 90 days from the date a claimant filed the first stage appeal, whichever is earliest.

3. Third Stage

The second stage is final. The Assistant Secretary of Employment and Training, U.S. Department of Labor, in Washington, D.C. may decide on his own motion to review the case further, but this is discretionary with the Assistant Secretary. Review by the Assistant Secretary is based solely on the written record. A claimant has 15 days from the time the Assistant Secretary mails notice that the appeal will be heard to present written arguments. The decision of the Assistant Secretary is final and conclusive and is a precedent applicable throughout the states.

IX. OVERPAYMENTS

An overpayment occurs when a claimant receives DUA to which s/he is not entitled, or receives a greater DUA payment than s/he is entitled to receive. A claimant is required to repay any DUA overpayments. In addition, a claimant is penalized if s/he makes a false statement for the purposes of obtaining DUA. The treatment of overpayments and the penalties for fraud are different for DUA than for traditional UI.

Unlike traditional UI overpayments, DUA overpayments cannot be waived (i.e., forgiven) by the state, even if the claimant is without fault. DUA overpayments are collected in the same manner as traditional UI overpayments, e.g., by withholding future DUA benefits or traditional UI benefits, by seizing the “overpaid” claimant’s income tax refund, etc.

A claimant who makes a false statement in order to obtain DUA, i.e., regarding eligibility, is penalized by being declared ineligible for DUA for the rest of the Disaster Assistance Period. A claimant who makes a false statement regarding a week of eligibility for DUA is penalized by being declared ineligible for DUA for that week and the next two weeks.
Endnotes

1. The Department of Labor published a request for comments regarding proposed changes to the DUA regulations at 59 Fed. Reg. 63670 (12/8/94), which at press time had not been adopted. The proposed changes would, if adopted, change many DUA eligibility requirements and also extend the application period from 30 to 60 days after the disaster announcement.
Section 11: DISASTER FOOD STAMPS

I. DISASTER FOOD STAMP BENEFITS
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   B. Disaster Temporary Emergency Food Stamps
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      2. Amount of Benefits
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II. EXPEDITED SERVICE FOOD STAMPS
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Endnotes
Chart: Food Stamp Eligibility for Current Recipients and New Applicants
DISASTER FOOD STAMPS

CAVEAT—In 1996, two laws were passed (The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 or PRWORA [Public Law No. 104-193], enacted August 22, 1996, and the Illegal Immigration and Immigrant Responsibility Act of 1996 [Public Law 104-208], enacted September 30, 1996, as a part of the Omnibus Continuing Resolution) which will change the public assistance programs referenced in this section. Although PRWORA eliminated SSI eligibility for most non-citizen legal immigrants, it appears that Congress is likely to substantially restore benefits to most immigrants who were receiving assistance in August, 1996, and possibly to other groups of non-citizens (e.g. disabled). The State of California will be implementing changes in the Aid to Families with Dependent Children (AFDC) and Food Stamp programs during 1997. Be sure to obtain current information on the requirements for each of the assistance programs listed in this chapter.

As of the printing date of this publication, it appears that many non-citizen legal immigrants will no longer be eligible to receive Food Stamp benefits. However, legal immigrants who fit into the following categories of exceptions will still be able to receive Food Stamps:

1. United States citizen;
2. Immigrant, or spouse or dependent children is/are a veteran (honorably discharged) or in the armed services (active duty in the U.S.);
3. Immigrant or spouse (or parents while immigrant was under age 18) worked in the United States for a total of 40 quarters (depending on the family situation, this could mean for 5 years for worker or spouse); or
4. Refugee, asylee, or person granted withholding of deportation within first 5 years of being granted this status.

OVERVIEW

Food Stamps are coupons that are used to buy food. The income and resource tests for Food Stamps are more liberal than other public assistance programs and, consequently, many individuals and families are eligible. During a disaster in which many persons lose their homes and jobs, providing adequate food becomes a major problem. Initially, the Red Cross will provide emergency food in shelters. However, if large numbers of persons are camping in public parks or arsenals, the United States Department of Agriculture (USDA) may make Food Stamps easily available to survivors for a limited time.

Please refer to the chart at the end of this Section, which summarizes Food Stamp eligibility for current recipients and for new applicants. People who are eligible for Food Stamps may be eligible for other benefits as well. Refer to Section 12 for a description of public benefit programs that disaster victims may be eligible for. There is a useful chart at the end of Section 12 describing Food Stamp, public benefit and disaster benefit programs for families, individuals, seniors and disabled people.
I. DISASTER FOOD STAMP BENEFITS

A. General Information

There are two separate and very different provisions for disaster Food Stamps which operate independently -- 7 U.S.C. §§ 2014(h)(1) (Disaster Temporary Emergency Food Stamps) and 2014(h)(3) (Replacement Food Stamps). The concept of disaster Food Stamps is to help people with their temporary emergency food needs which arise from the disaster. This includes people normally not eligible for regular Food Stamps who have lost their jobs, been forced from their homes, had their homes or belongings damaged, or lost food in the disaster.

B. Disaster Temporary Emergency Food Stamps

During a disaster, processing individuals for public benefits becomes difficult because of the nature of the disaster and the volume of applicants with need and limited documentation. Section 2014(h)(1) revises eligibility guidelines to provide Food Stamps to survivors of a disaster who would otherwise be ineligible for Food Stamps. This has long been in the statute at 7 U.S.C. § 2014(h)(1),(2) and in the regulations at 7 CFR § 280.1. This authority is typically used to dispense with normal income or resource criteria or to allow flat minimum allotments to be issued without the usual complex benefit calculations. The application deadline for emergency Food Stamps is 10 days from the disaster date.

1. Eligibility

The Secretary of Agriculture has broad discretion and can waive normal income and resource and other eligibility criteria. The most obvious groups who should be helped are those who might have a business, income or resources over the Food Stamp limits, but whose homes, businesses or property were damaged in the disaster.

Among those groups that are most likely to be ineligible for Food Stamps under the regular program, and hence in need of section 2014(h)(1) emergency Food Stamps, are:

   a. People who have already received Food Stamps for the month (and are therefore ineligible for another regular issuance) and whose food has been consumed or destroyed;
   b. People whose incomes are too high although their jobs have been lost or interrupted;
   c. People with incomes too high to get Food Stamps, or too high to get more than a few Food Stamps, with high disaster-related expenses (i.e., people who would be eligible if they were allowed to deduct these expenses from their incomes);
   d. People over the resource limit for the regular Food Stamp program because of resources no longer accessible to them; and
   e. Undocumented or otherwise ineligible aliens.

2. Amount of Benefits

The amount of benefits depends on the nature of the disaster and the state’s request. The Secretary of Agriculture has broad discretion. In many areas (Florida, the Midwest, South Carolina, for example), individuals were given a full month’s benefit equal to the maximum allotment for a family of that size.
C. Replacement Food Stamps (h)(3)

Section 2014(h)(3) provides for Food Stamps to replace food that was destroyed in a disaster for households eligible for Food Stamps under regular Food Stamp eligibility criteria. An argument can also be made that those temporarily eligible under (h)(1) are also eligible for replacements as well. The authority to issue replacements has long been in the regulations and it was expanded and inserted into the Food Stamp Act by the 1990 amendments at 7 U.S.C. § 2014(h)(3). The regulations at 7 CFR § 280.1 require that replacement stamps be issued after a disaster. Replacing food lost by disaster victims who were eligible for Food Stamps (note they need not have been actually receiving Food Stamps prior to the disaster) should be somewhat more automatic than the (h)(1) program.

1. Eligibility

For many families receiving Food Stamps, a disaster may destroy their food supply through damage, spoilage due to cut-off electricity, or simply the loss of their home.

These individuals are normally eligible for regular Food Stamps. During a disaster they are eligible for replacement stamps. These could be families already receiving Food Stamps, or individuals who meet the normal resource and income criteria but had not yet applied. An argument can also be made that those temporarily eligible for (h)(1) benefits are also eligible for replacements.

2. Amount of Benefits

A family should receive stamps equal to the value of the food they lost. The Secretary can set a maximum amount up to the value of one month's allotment for a family of the same size. Presumably, families could get this replacement only once in a disaster; however, the statute is silent about such a limit.

II. EXPEDITED SERVICE FOOD STAMPS

A. In General

After the initial disaster period, temporary emergency Food Stamp programs end. However, families may still be in need. These persons may wish to apply for Expedited Service Food Stamps.

People who are destitute and appear to be eligible for Food Stamps should get their entire monthly Food Stamp benefits within three days of applying. They should ask for "Expedited Service Food Stamps." The Food Stamps will be pro-rated over the month, so anyone applying after the first day of the month will get less than a full month's allotment. Food Stamp benefits vary depending on family size, income and housing costs. In 1995/1996, the maximum Food Stamps for a single person with no income was $119 per month.

B. Eligibility

1. Families with High Housing Costs

Families and individual applicants without enough money for rent, mortgage and utilities are eligible for expedited service. Households whose combined monthly gross income and liquid resources (cash) are less than the household's monthly rent or mortgage, and utilities, as appropriate, shall be eligible for expedited service.
2. **Families with Limited Funds**

Households with very limited funds, less than $100 in cash or in the bank and less than $150 gross income in the calendar month, are eligible for Expedited Service Food Stamps.

The county welfare office will look at:

   a. Income already received in the month and
   b. Income that the household is "reasonably certain" of getting before the end of the month. Clients should not list any income in the second category unless they are absolutely certain they will get the money. Also, if it is near the end of the month, the client has already received income over $150, and no Food Stamp application has been filed yet, s/he should be advised to apply on the first day of the following month. This way s/he can get a full month's worth of Expedited Service Food Stamps in three days, rather than waiting 30 days for the normal application to be processed.

C. **Other Requirements**

1. **Identification/Application Requirements**

All a client needs to do to start the process is submit an application with his/her name, address and signature on it to the welfare office. To get the stamps, however, clients must verify their identity. The regulations are very flexible, allowing verification with a driver's license, birth certificate, Social Security card, wage stubs or through someone in the community who knows the client and will write a note or talk to welfare on the phone (known as a "collateral contact"). No particular form of ID can be required, as long as the applicant has one of the above. The expedited Food Stamps ID requirements are often much more flexible than those for the county general assistance program. **If you have a GA client with an ID problem, don't forget to check eligibility for Expedited Service Food Stamps.** There is no requirement to furnish a Social Security number before getting Expedited Service Food Stamps.

2. **Work Registration and Exemptions**

Applicants must register for work unless exempted. However, the Expedited Service Food Stamps cannot be delayed because of lack of verification of the work exemption.

D. **Timeframe for Expedited Food Stamps**

1. **Three-Day Processing Deadline**

The county is required to provide benefits or deny an application for Expedited Service Food Stamps within three calendar days of the application. The weekend counts as one day. If the third day falls on a weekend or holiday, the county has to provide the stamps before the third day. Individuals must be given an application the day they go into the welfare office.

2. **Right To Apply at First Visit to the Welfare Office**

Sometimes applicants are screened out or told to return in several days (or weeks) for an appointment. The law is clear that individuals must be given an application the day they come in, even if it is Friday at 4:30 p.m.
Endnotes

1. Current non-citizen legal immigrant Food Stamp recipients will receive notices about termination of Food Stamps in August, 1997. They have the right to appeal, to have aid paid pending their decision and, in the case of applicants and recipients who are seeking review by Social Security of their work/earnings history, to receive continued assistance for up to 6 months.

2. In Los Angeles, many business people have several cars -- USDA liberalized the automobile limits. Likewise, in other areas, income has been offset by disaster-related expenses.

3. Note, however, that in settling *Deloney v. Madigan*, a disaster Food Stamp case out of Los Angeles, the benefits were extended to potentially thousands of new eligible aliens, yet very few (approximately 50) applied, despite extensive outreach and a long application period.

4. Note that this is the maximum amount available to a similar size household, not the amount the family would get if its resources or income were counted.

5. The federal agency that administers the Food Stamp Program, Food and Consumer Services (FCS), seems to take a different position. This point was briefed in *Deloney*, but since the case was settled instead of adjudicated, the issue has never been clearly decided.

6. Currently at 7 CFR § 274.6(a)(1)(iii), the normal replacement program does not require a disaster declaration. A fire or other misfortune triggers it. Also, an application must be made in 10 days. Under (h)(3), FCS can waive or extend application deadlines.

7. Again, this is the maximum allotment, not the amount the family would normally get based on its income and housing costs, etc.
<table>
<thead>
<tr>
<th>Food Stamp Eligibility for Current Recipients and New Applicants</th>
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<tbody>
<tr>
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| **On Food Stamps Now** | Disaster Food Stamps | Regular Replacement Food Stamps  
Disaster Food Stamps and  
Disaster Replacement Food Stamps  
7 USC § 2014 (h)(3) |
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Disaster Food Stamps  
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Section 12: PUBLIC ASSISTANCE PROGRAMS FOR DISASTER VICTIMS

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PUBLIC ASSISTANCE PROGRAMS FOR DISASTER VICTIMS

CAVEAT -- In 1996, two laws were passed (The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 or PRWORA [Public Law No. 104-193], enacted August 22, 1996, and the Illegal Immigration and Immigrant Responsibility Act of 1996 [Public Law 104-208], enacted September 30, 1996, as a part of the Omnibus Continuing Resolution) which will change the public assistance programs referenced in this section. Although PRWORA eliminated SSI eligibility for most non-citizen legal immigrants, it appears that Congress is likely to substantially restore SSI benefits to most immigrants who were receiving assistance in August, 1996, and possibly to other groups of non-citizens (e.g. disabled). The State of California will be implementing changes in the Aid to Families with Dependent Children (AFDC) and Food Stamp programs during 1997. Be sure to obtain current information on the requirements for each of the assistance programs listed in this chapter.

As of the printing date of this publication, it appears that many non-citizen legal immigrants will no longer be eligible to receive Food Stamps. However, legal immigrants who fit into the following categories of exceptions will still be able to receive Food Stamps:

1. United States citizen;
2. Immigrant or spouse or dependent children is/are a veteran (honoring discharged), or in the armed services (active duty in the U.S.);
3. Immigrant or spouse (or parents while immigrant was under age 18) worked in the United States a total of 40 quarters (depending on the family situation, this could mean, for example, 5 years for worker and spouse).
4. Refugee, asylee, or person granted withholding of deportation within first 5 years of being granted this status.

OVERVIEW

The public assistance programs described in this Section are those which are particularly helpful to disaster survivors. May of the programs are available both to people who were receiving public assistance before the disaster and those made eligible for public assistance by the disaster. Note that receipt of federal disaster assistance described in the previous sections of this Handbook will not affect eligibility for public assistance programs.

Please refer to the chart at the end of this Section, which summarizes the programs described in this Section and cross-references the federal disaster assistance programs. The checklists in Section 6 also cross-reference public assistance programs and disaster assistance programs. Refer to Section 11 for a description of Food Stamp benefits that are available for disaster victims. (Note that Food Stamp eligibility requirements are liberalized after a disaster.)

I. AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC)

AFDC currently provides support for dependent children and their families. Sometime during 1997, the rules for the AFDC program will likely change. The federal and state governments fund AFDC, although the new program is a "block grant," and many of the programs listed here (e.g. NRSN, Homeless Assistance) may change or not exist as a result. Each county welfare department administers the program. Currently, AFDC recipients are automatically eligible for the Medi-Cal program, and this may or may not continue. Food Stamp eligibility is based on who buys and prepares the food together in a household.
A. General Eligibility

California residents must currently meet two conditions:

1. No support from one parent because of absence, disability or under/unemployment and
2. Children under 18 years of age (the child may be 18 years old if the child is still in high
   school and will graduate before turning 19).

All children born in the U.S. are eligible for AFDC even if their parents are not. An applicant can have $1,000 in savings, a car worth $1,500, a home they live in and household belongings. There are higher limits for recipients. There are also restrictions on income, which depend on the size of the family. In 1996, benefits ranged from approximately $479 per month for a parent with one child to $806 per month for a parent with four children.

B. Non-Recurring Special Needs (NRSN)

1. In General

   When a disaster strikes, AFDC recipients who have lost their homes or household belongings can get a grant to cover emergency needs. The payments are limited to $600 to pay for all emergencies arising from each incident. There are two additional special requirements to qualify for a special needs grant:

   a. The emergency must be due to circumstances beyond the control of the family and
   b. The family must not have more than $100 available to them.

Families can apply for this grant whenever a sudden emergency arises. There are no specific deadlines. However, welfare departments are strict about this program except during disasters. The AFDC family must explain to the welfare department how it plans to pay for the entire cost of the need. AFDC workers can determine the most cost-effective way of administering the benefit. For example, they can give the family a voucher or refer them to a second-hand store.

Many needs are similar to those covered under the Individual and Family Grant Program. See Section 8. Note that the grant levels are much lower in the AFDC program.

2. Special Needs Grant for Personal Property

   Special needs grants can cover replacement/repair of clothing and household items:

   a. Clothing, actual cost up to $25 per person;
   b. Double bed with mattress, actual cost up to $143;
   c. Refrigerator, actual cost up to $190;
   d. Stove, actual cost up to $142;
   e. Dishes, kitchen utensils and bedding, actual cost up to $12;
   f. Other necessary furniture, actual cost up to $50; or
   g. Other necessary items e.g., vaporizer for asthmatic child.

3. Special Needs Grants for Housing

   When an AFDC family's "home has been destroyed, made uninhabitable or inaccessible," a grant will pay for interim shelter or temporary housing. If a family is already receiving money from the AFDC Homeless Assistance Program (See Par. I.D.1), they cannot receive an NRSN grant for housing. Special needs grants may also pay for essential repairs to a damaged home owned by an AFDC family, moving and storage costs and security deposits or utility hook-up fees which are needed. See Sections 6 and 7 for descriptions of FEMA housing assistance programs.
C. Immediate Need

California provides immediate assistance to AFDC applicants with emergency needs. Applicants who receive this assistance can receive an advance on their AFDC monthly benefits within a few days of applying and have their eligibility determined on a fast track -- in 15 calendar days instead of the normal 45 days.

1. General Requirements

The AFDC Immediate Need program is limited to families with emergency needs.

The family must be apparently eligible for AFDC. The information on the application form must show that the family has extremely limited income or resources to meet its needs, that there is a parent who is absent, disabled or under/employed and that there is a child under 18 in the household (the child may be 18 if still in high school and will graduate before turning 19). Non-citizens must show proof of immigration status and women pregnant with their first child must present medical documentation of their pregnancy.

Families who have emergency transportation or eviction needs qualify if their financial resources are less than the need. In all other circumstances, the family cannot have more than $100 cash or liquid resources.

Welfare departments are not required to issue emergency benefits if the emergency need can be met by local charities or by the issuance of Food Stamps or homeless assistance. (However, the agency can only make one community referral to meet one need.)

2. Immediate Need Benefits

The welfare department must act on the immediate need request within one working day after application. If the welfare department finds a family eligible for immediate need, the family can receive an advance on their first month’s grant of up to $200 cash.

If families face an eviction notice deadline, they may be able to get their full AFDC grant within three days. However, they must provide verifications such as birth certificates or requests for them, bank records and Social Security numbers, as well as verification of the eviction deadline. See Sections 7 and 13D.

If an immediate need payment is made, the welfare department should then process the family on a fast track for full AFDC eligibility. It must process the application within 15 days. Applicants should get a full check, minus the advance, within this period.

3. Written Denial of Immediate Need Payment

If the agency denies the immediate need application, it must issue a written denial which the applicant can appeal. The agency can continue to process the application on the 45-day track.

Most families who apply for AFDC, particularly in crisis situations, meet the eligibility definition for immediate need. Many welfare eligibility workers are reluctant to acknowledge immediate need cases at the eligibility interview. The fast track processing increases their workload.

Families eligible for immediate need who have additional needs should also request special needs or emergency assistance programs. These emergency assistance programs include homeless assistance.
D. AFDC Homeless Assistance Program (HAP)

1. In General

Homeless families with children may be eligible for housing assistance from AFDC. The two types of aid available under the AFDC Homeless Assistance Program (AFDC HAP) are temporary housing assistance to pay for motels, etc. and permanent housing assistance to pay move-in costs for permanent housing. See Sections 6 and 7 regarding federal disaster housing programs. Note that a family cannot receive a NRSN grant for housing costs if they are already receiving assistance under AFDC HAP (See Paragraph I.B.3.).

This program is available to families on AFDC only once in a lifetime except when the family becomes homeless due to a natural disaster, in which case there is no limit. Families can also receive homeless assistance once every 24 months if homelessness is caused by domestic violence, uninhabitability housing problems or medical/mental illness (with verification of all of these exceptions).

2. Eligibility for HAP

Families must be homeless to receive assistance. Families who are living on the street, in their cars, parks, motels, or staying in a shelter are homeless. Families staying in someone else's home are homeless. Eligibility does not require a three-day notice, or sheriff's or marshall's notice, though county workers sometimes improperly request one. An applicant's sworn statement is sufficient to establish homelessness.

Applicants must be either receiving AFDC or "apparently eligible" for AFDC. Families can have no more than $100 on hand. Families that have more than $100 in liquid resources are not eligible for AFDC HAP. Liquid resources generally means money in a bank account, and checks and cash on hand. It does not include the current month's income from AFDC. The $100 liquid resource test is only applied once, for each period of homelessness, at the time of application for AFDC HAP benefits. Families with only a little over $100 should spend down to $100 and then reapply.

3. HAP Payments -- Only to Commercial Landlord

HAP payments can be made only to commercial establishments, shelters, publicly-funded transitional housing or to persons in the "business of renting properties." This provision prohibits temporary HAP payments to friends or family members. To qualify, the family must pay something for its housing. This requirement may only be a problem for people in shelters that charge nothing. If there is any money left over after paying the interim shelter costs, the AFDC recipient can keep the balance.

4. Temporary Homeless Assistance Benefits

a. Amount of Benefits

Temporary Homeless Assistance provides money for families to secure temporary shelter in a motel or hotel. Welfare pays up to $30 per night, for up to 16 nights. Families with more than four members receive an additional $7.50 for each additional person, up to a maximum of $60 per night. This money is in addition to a monthly AFDC check or an AFDC immediate need payment. The family does not have to repay this money.

b. Same-Day Processing Deadline

Eligible families must be sheltered the day they apply. They must be given an application the day they come to the welfare office no matter how late in the day. If a family has no place to sleep that night, the county must either find shelter for the family for one night or issue a $30 payment. This is true even if someone goes in at 4:30 p.m. on Friday. If the family has a place to stay that night, the county must make a temporary housing assistance eligibility decision before the close of the following work day and, if eligible, issue a check for $30 per night.
5. **Permanent Housing Assistance**

a. **Move-in Costs**

Permanent housing assistance benefits pay the move-in costs for a homeless family. They include:

1) Last month's rent;
2) Security deposit;
3) Utility deposit; and
4) One credit check for the actual rental.

The family is responsible for the first month's rent. HAP will not pay for overdue utility bills which must be paid before utility service can be established. It does not cover telephone deposits. The deposits must be a condition of moving in, so clients should be told to have the deposits written into the lease or agreement, if possible. If the family had to pay for a credit check to obtain the rental, this can also be reimbursed. The cost of other credit checks for places the family did not rent cannot be reimbursed.

b. **Limitations**

Unlike temporary shelter, to obtain money for permanent housing a family must already be on AFDC or be determined actually eligible. If a family presents all the evidence necessary to establish eligibility, it can get an expedited eligibility determination.

A family must locate an apartment or house that rents for less than 80% of the AFDC grant for a family of its size. If moving into shared housing, the family's share of rent cannot be more than 80% of the AFDC grant.

Homeless Assistance money cannot be used to return to the family's most recent former residence (i.e., the same unit or house), unless family members left because of unusual circumstances beyond their control, such as a fire or a disaster. A different unit in the same apartment building is not considered the same residence.

c. **Verification Requirements**

Before it issues payment, the county welfare department will need to verify the rental. It requires a written rental agreement or lease that indicates the monthly rent. A welfare worker will contact the landlord or, if this is not possible, verify the rental by the applicant's sworn statement.

d. **Next-Day Processing Deadline**

1) **AFDC Recipients**

The county must issue a check by the end of the next work day following the day the family gives the county a copy of a lease agreement, or other evidence of the possible tenancy. The agreement should include the terms of the deposits.

2) **AFDC Applicants**

If the AFDC application is still pending when the family requests permanent housing assistance, the county must finish processing the regular AFDC application immediately. The deadline is the next work day after the family gives the county all verification needed to process the regular AFDC application, as well as the evidence of possible tenancy.
II. SUPPLEMENTAL SECURITY INCOME

The Social Security Administration (SSA) administers the Supplemental Security Income (SSI) program. This federal program, supplemented with funds from the State of California, provides income to low-income, disabled persons and persons over age 65. Because they are indigent, SSI recipients automatically qualify for Medi-Cal, the State's medical program for the poor. The application process for SSI can take more than a year. Please refer to the caveat language at the beginning of Section 12.

A. Eligibility

1. In General

Individuals must be aged, blind or disabled to qualify for SSI. They must also be citizens or legal residents. Persons over age 65 who are low-income automatically qualify for SSI.

2. Definition of Disability

Individuals must be blind or disabled within the meaning of listings which the Social Security Administration issues. A person who claims benefits because of disability must be unable to work at any job for at least 12 months because of a serious impairment.

3. Income and Resources

An individual must be low-income. The individual must also have limited resources. These can include only:

   a. A home;
   b. A car worth less than $4,500 (unless needed for medical reasons when the value can be more than $4,500);
   c. Household goods under $2,000;
   d. Burial plot or insurance;
   e. Life insurance -- maximum $1,500 face value; and
   f. Resource maximum of $2,000 for an individual or $3,000 for a couple.

Individuals with greater resources can spend them down until they reach eligible levels.

B. Program Benefit Levels

Program benefits depend on household composition. As of 1996, a single disabled adult may receive as much as $626 per month; disabled minors may receive as much as $533 per month. Clients sharing expenses with others can expect somewhat lower benefits. SSI benefits include funds to cover food costs. Food Stamps are not available to SSI recipients in California. There is also a program in California called “SSI Special Circumstances.” It has not been funded by the legislature for the past several years, but it can provide for funds for emergency, non-recurring needs (e.g. replacement of a refrigerator). Check with a local DSS office.

C. SSI Emergency Advance Payments

1. Emergency

SSI applicants who appear to be eligible for SSI and who are having a financial emergency can receive an advance payment to help them through the emergency. This expedited procedure is called Emergency Advance Payments. It is available for applicants who are proven eligible or presumptively eligible.

2. Application Must be on File with SSA

A client must file an application at the Social Security office. Documentation must be provided of age over 65 or medical documentation of disability from the treating physician. The applicant should inform SSA of the financial emergency.
3. Immediate Payment Procedure for SSI

a. Critical Payments

The Social Security Administration has several procedures for expediting Social Security and SSI checks to people whose applications have already been approved, but who have not received a check. One procedure takes three to five days to complete and is called "critical payment." The U.S. Treasury mails the check to the client. Another procedure is referred to as "A-OTP" or "M-OTP," which takes seven to ten days and also involves mailing the check.

b. Immediate Payment -- Same-Day Payments

If the client has a financial emergency and cannot afford the possibility of computer or mail delays which occur with "A-OTP" and "M-OTP," an "immediate payment" can be made on the same day. Each local SSA office can pay up to $200 via immediate payment checks on hand so there should be no delays due to the computer or mail.

c. During Disasters

The Social Security Administration has procedures in place to expedite applications and to replace checks to disaster survivors.

d. Adverse Public Relations Problem

The management of the local SSA office can decide that the situation is "a potential adverse public relations problem requiring prompt action." Some local SSA offices consider a phone call from an attorney or a congressional office sufficient to meet this criterion. Complaints made to the Critical Case Unit of the SSA Regional Office, 415-744-4499, are usually handled as potentially adverse public relations cases. The Critical Case Unit only accepts complaints from advocates, not from clients.
1. Current non-citizen legal immigrant Food Stamp recipients will receive notices about termination of food stamps in August, 1997. They have the right to appeal, to have aid paid pending their decision and, in the case of applications and recipients who are seeking review by Social Security of their work/earnings history, to receive continued assistance for up to 6 months.
### Public Assistance and Disaster Assistance Programs for Disaster Victims

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<thead>
<tr>
<th>NEED</th>
<th>Families With Children Under 18</th>
<th>Families Without Children Under 18</th>
<th>Seniors or Disabled Individuals (Including Children)</th>
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<td>AFDC’ Non-Recurring Special Needs (NRSN); AFDC Temporary Homeless Assistance <em>(See Sec. 12)</em></td>
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<td>Possibly if SSI check is lost or delayed (Immediate Payment) (IP); Emergency Advance Payments (EAP) for SSI applicants <em>(See Sec. 12)</em></td>
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1. The child may be 18 years old if the child is still in high school and will graduate before turning 18 years old.
2. See footnote 1.
3. In 1997, the State of California will be implementing changes to Aid to Families with Dependent Children.
4. As of the printing date of this publication, moneys have not been allocated by the legislature for the past several years, but program authority still exists.

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CONSUMER ISSUES

OVERVIEW

Disasters are breeding grounds for unscrupulous consumer practices. Disaster victims, particularly senior citizens, the disabled and limited English or non-English speaking persons are vulnerable to scams. Even financially sound families may fall behind on credit payments resulting in collection actions. Consumer information is essential to help prevent victimization.

IMPORTANT NOTE: The information contained in this section is designed to help a volunteer attorney provide preliminary guidance to victims of consumer fraud or those with debtor/creditor problems. Because of the complicated nature of such cases, disaster victims should be advised to seek the advice of an attorney.

I. MAJOR CONSUMER ISSUES AFTER A DISASTER

A. Caveat Emptor -- Let the Buyer Beware

After any disaster, three factors impact consumers: 1) A desperation to repair any damage and to heal family shock over losses; 2) Excessive demand on firms which provide repair services; and 3) Limitations on the supply of available services because of damage to service providers. In any situation, excess demand and limited supply causes prices for goods and services to increase. A major disaster exacerbates this factor. Consumers should take time to prioritize their needs and develop alternative plans to solve their problems.

Before contracting for any services, the consumer should:

1. **Verify licensing**, if applicable, with appropriate regulatory agencies;
2. **Obtain comparison bids** with lists of services provided and material costs;
3. **Obtain all estimates in writing**;
4. **Speak with other customers to verify satisfaction**;
5. **Read all contracts** or service agreements **before signing**; and
6. **File complaints with appropriate regulatory agencies if confronted with potential fraud or abuse**.

The telephone number for the Department of Consumer Affairs is 1-800-952-5210. Urge consumers to contact their county District Attorney's Consumer Fraud Division if someone calls with what the consumer feels is a scam. An early alert can prevent others from fraud. Urge them to contact the local newspaper's consumer desk to notify them of scams.

B. Price Gouging

California law, Penal Code § 396 makes it a misdemeanor to increase the price of food, repair, reconstruction, emergency medical supplies or gasoline more than 10% after a disaster. The exception is if the seller can prove that the distributor or supplier has increased the price in excess of 10%.

Local governments frequently enact price gouging ordinances after a declared disaster (e.g., Los Angeles Municipal Code § 47.12).

C. Home Equity Fraud

Home equity is the market value of the home minus the mortgage and other liens on the home. For example, if a home's market value is $100,000 and the mortgage and all liens are $80,000, the equity is $20,000 ($100,000 - $80,000 = $20,000).

Home equity fraud is the taking of a homeowner's equity by fraudulent means. Victims of home equity fraud are most often elderly persons, particularly widows over age 70, minorities with limited English skills or homeowners with fixed incomes below $24,000.
1. **Home Repair/Lien Contract Scams**

After a disaster, a homeowner frequently needs major repairs for serious damage. This may include roofing and siding, plumbing, electrical wiring, heating and cooling, replacement of damaged structures, interior living quarters, etc. The cost of these repairs is most likely greater than the insurance coverage and the ability of the homeowner to cover the cost. Frequently, a low-income homeowner has deferred maintenance which may make the damage ineligible for FEMA funding.

The homeowner may feel trapped between the high cost of the repairs and the limited funding for repairs. Unscrupulous contractors or salespeople will take advantage of the fears of the homeowner and agree to make the repairs at unrealistic prices or financing schemes.

The salesperson or contractor then induces the homeowner to sign a lien-contract secured by the home. The loan repayment amounts are higher than what the consumer can afford to pay on a fixed income. Alternatively, the contractor provides inadequate repairs or services and the consumer refuses to pay the note to the finance company. The lien-contract, however, functions like a promissory note. If the homeowner misses only one payment the creditor may foreclose and sell the home without ever going to court. The common result is that the homeowner not only fails to have necessary repair work done, but loses his/her home through foreclosure.

2. **Refinancing Schemes**

Because of the increased costs of confronting an emergency, consumers frequently fall behind in their credit payments or overextend themselves to the point that they must choose whether to pay creditors or obtain basic necessities such as food. Such consumers are often approached by finance companies promising to consolidate the homeowner's debt for existing mortgage, credit card debt, car loans and repair loans. They then pressure the homeowner to sign multiple agreements without sufficient time to review them or consult with anyone.

The negative outcomes of such refinancing schemes include high processing fees, payments to bogus/phantom creditors and default on the loan. The homeowner often cannot pay both the refinancing costs and basic living expenses, resulting in a situation far worse than before the refinancing.

3. **Foreclosure Consultants/Equity Purchasers**

Some financial predators prey on persons during the foreclosure process. They claim to be foreclosure experts who offer to assist homeowners after they receive a notice of default. Once the finance company files a notice of default with the County Recorder's Office, the homeowner is deluged by these foreclosure consultants. These financial thieves further encumber the property with liens for fees and extravagant charges. They try to obtain title through a power of attorney or by direct transfer. They take advantage of the homeowner's distress and offer to purchase the home for below market value through misrepresentations on the value of the home and on encumbrances. They represent to the homeowners that they may stay in the property for the rest of their lives. In fact, after they obtain the property, they sell it and the new owner serves the tenants with eviction papers. Clients should be warned of such scams.

4. **Caretaker/Befriender/Relative Scams**

Isolated homeowners who need assistance to maintain their homes frequently are victimized by friends, relatives or caretakers. They assist the homeowner with household chores, including shopping or taking them on medical visits. Children of elderly parents sometimes seek control of their parents' property for their own uses. All of these persons use scare tactics to convince the elderly, disabled or limited English or non-English speaking person to transfer title of the property to them. Sometimes they obtain a power of attorney when a person is very sick. Unbeknownst to the homeowner, the power of attorney holder may convey or encumber the property and keep the proceeds for him/herself.
D. Debtor/Creditor

Often disasters can trigger financial crises as victims fall behind in their bills. Missed payments or collection actions can damage their credit ratings. Victims should notify creditors of the situation as soon as possible. Some creditors will agree to postpone payments for a period of time.

1. Debt Collection

a. Communicating and Negotiating with Creditors

If the debtor can afford to make small monthly payments, s/he should contact the collector to ask if the payments are acceptable and reach an agreement on all of the following:

1) Total amount owed on the bill, including the interest to be added each year;
2) Amount of monthly payments;
3) Due dates that payments must reach the collector;
4) Address where payments must be mailed; and
5) Whether the collector will remove negative information about the bill from the debtor's credit report.

b. Documenting Communication between Debtor and Creditors

It is important for debtors to keep a record of phone calls from the collector regarding the past due bill, including the full names of the individuals s/he speaks with and date, time and details about the conversations. If the debtor arranges a payment agreement, s/he should send a brief letter confirming the terms of the payment plan. The debtor should always keep copies of any letters and payments sent to the collector. Letters to the collector should be sent certified mail. Consumer Credit Counseling Services may negotiate with collectors on behalf of debtors for little or no fee. See the business listings of the White Pages of the phonebook.

c. Notifying the Collector of Debtor's Inability to Pay

Some debtors who have no employment income or prospects for such income might be considered "judgment proof." Such people own no real estate, no personal property of significant value, no car worth more than $1,200 and would probably not have bank accounts or other investments. Such debtors who are unable to arrange a workable payment plan should consider sending the collector a letter informing them of the inability to pay and requesting that the collector stop contacting the debtor about the debt. The debtor should include in the letter any special circumstances which help explain the inability to pay.

Sending such a letter limits the collector's right to contact the debtor. Thereafter, a collector may only contact the debtor to notify him/her of its intention to pursue a lawsuit or to inform him/her that collection efforts will cease.

d. Filing Bankruptcy

Bankruptcy may become a last resort option for disaster victims who cannot satisfy their creditors. Filing bankruptcy will not necessarily cancel all debts. It is recommended that individuals wishing to pursue bankruptcy proceedings be referred to a State Bar-certified lawyer referral service where an experienced bankruptcy attorney can be identified. For a list of current State Bar-certified LRSs, call 415-561-8250.

Please refer to the State Bar pamphlet, "What Can I Do If I Can't Pay My Debts." To order the pamphlet, call the State Bar at 415-561-8867.
**What Happens when Debtors Fail To Pay**

Debtors are not criminally liable for owing debts; however, a collector may file a civil lawsuit against them to collect the debt, and a court judgment will give the collector the right to collect using wage garnishment or seizure of property. Also, the collector has the right to report the unpaid debt to a credit reporting agency such as TRW.

Auto loan contracts usually permit the collector to repossess a car without advance notice after a borrower's failure to make payments. The debtor will have to pay the full balance of the loan plus all costs of repossession in order to regain possession. If the debtor cannot pay, the collector may sell the car and sue the debtor for the amount the debtor owes over the sale price.

If a past due bill is for services a debtor continues to receive (e.g., utilities), the collector may discontinue service or withhold reconnection, even if the debtor moves to another residence. The collector may also sue to try to collect the unpaid balance.

**2. Credit Reporting**

**a. Legal Authority**

This area is governed by the Federal Fair Credit Reporting Act, 15 U.S.C.A. § 1681, which requires that credit reporting agencies furnish a free copy of a consumer's credit report upon request within 30 days after the consumer is notified of an adverse action. Credit reporting agencies also have a statutory obligation to investigate consumers' claims.

**b. Experian**

Experian (formerly TRW Information Systems & Services) is one of a number of credit reporting agencies. To obtain a credit report, call Experian at 1-800-682-7654. Consumers who have a dispute with a creditor over an item on an Experian report should send a letter to: Experian; Attn.: National Consumer Assistance Center; P.O. Box 949; Allen, TX 75013. The letter should include the following:

1) Identification number of the credit report;
2) Creditor's name and account number;
3) Nature of the dispute;
4) All identifying information about the debtor including full name, addresses for the previous five years, birthdate including year and social security number; and
5) Documentation regarding the change of status of the debt.

The procedure for disputing an item should also be provided on the credit report.

**c. Equifax**

To obtain a credit report from Equifax, call 1-800-685-1111. Consumers who dispute items on an Equifax report should complete a research request form, included with the consumer's copy of the credit report, and send it to Equifax at P.O. Box 740256; Atlanta, GA 30374.

**II. REMEDIES**

**A. California Civil Code Consumer Protection Laws**

1. **Consumers Legal Remedies Act -- Civil Code § 1750 et seq.**

This law protects consumers against unfair and deceptive business practices. It prohibits:

a. Mislabelling of goods or services as those of another;
b. Misrepresentations regarding the condition of goods or services, or the geographical origin of goods; and
c. Certification of goods, quality of goods or services, price of goods or services, etc.

The Act provides that a consumer who is injured by such unlawful practices may bring an action to recover actual damages no less than $300, an order enjoining such methods or practices, punitive damages and any other relief the court deems proper.

2. **Home Solicitation Contracts -- Civil Code § 1689 et seq.**

This Act regulates the home solicitation industry. It requires specific language to be included in contracts and notices of cancellation. A buyer has the right to cancel a home solicitation contract until midnight of the **third business day** after the day on which the buyer signs the agreement. If a seller fails to give a buyer notice of the right to cancel the contract, until the seller has complied, the buyer may cancel. In addition, the Act provides the guidelines for security interests in real property for goods installed on a home.

3. **Home Equity Sales Contracts -- Civil Code § 1695 et seq.**

This law protects homeowners who are in foreclosure from equity purchasers and their agents. It requires equity purchasers to provide a contract with specific language. It requires agents to be bonded to protect homeowners from fraud or violations of this Act. An equity purchaser who violates certain provisions or engages in fraud or deceit is guilty of a misdemeanor. Within two years of the date of the recording of the sale, the homeowner may rescind any transaction as void or voidable for violations within two years of the date of the recording. The equity purchaser is liable for all damages resulting from any act prohibited by this chapter.

4. **Mortgage Foreclosure Consultants -- Civil Code § 2945 et seq.**

Foreclosure consultant service agreements must be in writing. Homeowners may rescind foreclosure consultation contracts until midnight of the **third business day** after signing. Foreclosure consultants are prohibited from:

a. Charging or receiving any compensation until after the consultant has fully performed;
b. Charging or receiving any fee or interest which exceeds 10% per annum of the amount of the loan;
c. Taking any wage assignment, lien on real or personal property, or other security to secure payment;
d. Acquiring any interest in a residence in foreclosure from an owner with whom the foreclosure consultant has contracted;
e. Taking any power of attorney from any owner; and
f. Inducing or attempting to induce any owner to enter a contract which does not comply with contract requirements contained in this article.

5. **Rescission -- Civil Code § 1689**

A contract may be rescinded if all parties consent. The following are possible bases for rescission:

a. Mistake;
b. Duress;
c. Fraud;
d. Undue influence;
e. The consideration for the obligation fails; and
f. The consideration is void.

Rescission is also allowed if the contract is unlawful or if the public interest will be prejudiced by permitting the contract to stand.
6. **Cancellation -- Civil Code § 3412**

A written instrument, in respect to which there is reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled.

Civil Code § 3412.

B. **California Business and Professions Code ("B & P Code") Remedies**

1. **Unfair Business Acts -- B & P Code § 17200 et seq.**

This chapter prohibits "any unlawful, unfair or fraudulent business acts or practices, and unfair, deceptive, untrue or misleading advertising." B & P Code § 17200.

Courts can enjoin ongoing wrongful and fraudulent business practices and grant specific or preventive relief in whatever context the activity may occur. An individual may bring an action on behalf of the general public. The statute of limitations is four years which means that an individual may be able to incorporate a violation of law that has lapsed and revive it through a cause of action under § 17200.

2. **Acts Against Seniors and the Disabled -- B & P Code § 17206.1**

This chapter provides for an additional civil penalty of $2,500 for each violation against senior citizens or disabled persons.

3. **Contractors' State Licensing Requirements -- B & P Code § 7031**

Only contractors properly licensed by the Contractors State License Board may sue to recover the following costs:

- a. Contract price;
- b. Reasonable value of labor and materials; or

A homeowner may use this as a defense to any actions brought against him/herself by an unlicensed contractor.

4. **License Revocation -- B & P Code § 7106**

This section allows an action for the suspension or revocation of a contractor's license to be included in an action involving the performance or legal obligation of a contractor.

5. **Home Improvement Contracts -- B & P Code § 7159**

This section lists the many provisions required in home improvement contracts that exceed $500. Many contractors fail to comply with these mandatory elements. Violations are misdemeanors punishable by a fine of between $100 and $500.

6. **Loan Financing Linked to Contract (Spiking) -- B & P Code § 7163**

Many financial scams work by burdening low- or fixed-income persons with loan financing which the contractor arranges. When the homeowner defaults, the finance company forecloses on the home.

This statute provides that:
[A] home improvement contract is unenforceable against the buyer if a loan is a condition precedent to the contract, the contractor provides financing, or the contractor assists or refers the buyer in obtaining the loan unless all of the following are satisfied:

a. A third party agrees to make the loan;
b. The buyer agrees to accept the loan or financing; and
c. The buyer does not rescind the transaction within the period prescribed (Truth in Lending Act, 15 U.S.C. § 1601 et. seq. or Reg. Z).

B & P Code § 7163.

If the above conditions are not met, the contractor may not deliver property, perform services other than obtaining building permits, nor represent that the buyer has any obligation under the contract. The buyer should return any property delivered by the contractor if possible.

C. Miscellaneous California Statutes

1. Regulation of Notaries -- Government Code § 8214

Notary publics must be bonded to cover any possible damages that arise as a result of notarizing documents. While some notaries commit intentional fraud, others become unwitting accomplices to predators on persons with property. The con artists may trick an elderly widow into signing and notarizing a document conveying her property to them. In other instances, a person representing himself as the owner has convinced a notary that he is the person who can convey title.

This law provides a bond to protect the consumer.

For the official misconduct or neglect of a notary public, the notary public and the sureties on the notary public's official bond are liable in a civil action to the persons injured thereby for all the damages sustained.

Government Code § 8214.

2. Elder Abuse -- Welfare & Institutions Code § 15600

The Elder Abuse and Dependant Adult Civil Protection Act provides for protection against individuals who try to take financial advantage of elderly or disabled persons. It provides for attorney's fees and punitive damages in addition to other remedies in contract and tort.

It defines fiduciary abuse as:

[A] situation in which any person who has the care or custody of, or who stands in a position of trust to, an elder to a dependent adult, takes, secretes, or appropriates their money or property, to any use or purpose not in the due and lawful execution of his or her trust...

Welfare & Institutions Code § 15600.

D. Federal Remedies

Regulation Z -- 12 CFR § 226.1 et seq.

This federal act requires loan and credit providers of transactions involving four or more installment payments, to provide specific loan disclosure statements to the borrower. It provides for a three-day rescission period and damages for violations of this Act. In addition, violations of the disclosure requirement may extend the rescission period up to three years from the time of consummation of the loan.

E. Common Law Remedies

Other remedies include the traditional common law remedies of fraud in fact and fraud in the inducement. The first involves contracts which are signed because of misrepresentation of the contents. A
deed transferred because of fraud is void and the title remains in the grantor. The second involves a
document whose contents the signer knows, however, s/he is forced to sign it without proper consent. This
type of contract is voidable. Forgery is where a person falsely signs a document or tricks someone into
signing a document. Such documents are void.

III. MISCELLANEOUS CONSUMER ISSUES

A. Home Repair Problems

Abandonment and shoddy work problems with home repair contractors are frequent during a disaster. The
free booklet entitled, "What You Should Know Before You Hire a Contractor" available from the
Contractors State License Board (CSLB) is a good resource. At a minimum, homeowners should check
license status and references prior to signing a contract. CSLB can be contacted at 1-800-321-2752.

Homeowners with complaints about a contractor's performance should file a complaint with the CSLB and
with the contractor's bonding company, and consult an attorney for advice regarding the advisability of
filing a civil damages action.

B. Mechanics' Liens

If a homeowner fails to pay for repair work which the contractor claims to have satisfactorily completed,
the contractor may file a mechanics' lien. A contractor must then commence a lien foreclosure action
within 90 days after the filing of the lien.

C. Moving Company Problems

The California Public Utilities Commission (PUC) regulates moving and storage companies. However,
many of the PUC rules and regulations are suspended immediately after a disaster including those
regarding rates. Consumers should always ask the salesperson/representative for a license number and call
the PUC at 1-800-877-8867 to check license status before signing a contract. Consumers may call 1-800-
366-4782 to file a complaint or to report excessive rates.

D. Storage Companies

Storage companies must be bonded and a consumer should confirm bond information with the bond
company before choosing a storage company.

E. Instant Credit/Advance Fee Loans

Call the Department of Real Estate to check licenses and to file complaints. The main office is in
Sacramento (916-227-0931). Other offices are located in San Francisco (415-904-5925), Fresno (209-445-
5009), Los Angeles (213-897-3399) and San Diego (619-525-4192). Advance fee defrauders convince
people with bad credit to pay high fees for loans which do not materialize.

Individuals who need emergency funds may qualify for low-interest disaster loans from the Small Business
Administration. See Section 9. They should avoid the use of advance fee lenders. The Department of Real
Estate licenses lenders for advance fee loans or instant credit. Corporate lenders must be listed with the
Department of Corporations.

F. Insurance Problems

For information and complaints, call the Department of Insurance at 1-800-927-4357.

Independent adjusters help a homeowner determine the amount of the loss and obtain the maximum the
homeowner is entitled to under the policy. Unscrupulous adjusters improperly recommend contractors to
make repairs. Homeowners should always hire contractors independently of the adjuster. Contracts must
include a 72-hour right to cancel.

If the insurance company refuses to pay or the adjuster minimizes the damage to the homeowner's property,
the homeowner should contact an attorney who is an insurance specialist immediately.
G. Phoney Charities

Door-to-door and telephone solicitations from charities without identification are frequent after a disaster. Avoid "(900)" phone number donations and contact the county Department of Social Services to check if a charity is registered. The county District Attorney's Consumer Fraud Division may be aware of fraudulent schemes.

H. Attorney Solicitations

The State Bar of California strictly prohibits attorneys from:

1. Soliciting clients at an accident scene, at a hospital or on the way to a hospital;
2. Seeking clients who, because of their physical, emotional or mental state, are unable to exercise reasonable judgment;
3. Guaranteeing the outcome of a case; and
4. Seeking employment by mail.

Complaints against attorneys may be filed by calling the State Bar at 1-800-843-9053. See Section 4. Before hiring an attorney, individuals can call the State Bar Membership Records Department at 415-561-8877 to obtain public information about the attorney, including any discipline history. Look in the Yellow Pages for phone numbers of certified lawyer referral services. The State Bar can also provide phone numbers of current State Bar-certified lawyer referral services; call 415-561-8250.

I. Powers of Attorney

Consumers should avoid individuals who promise to obtain disaster relief if they sign a Power of Attorney form. In past disasters, these persons typically obtained benefits and then kept all or a large portion for themselves. FEMA does not authorize or license persons as intermediaries.
Section 13B: DOCUMENT REPLACEMENT

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DOCUMENT REPLACEMENT

OVERVIEW

During a disaster, people often must abandon their homes on short notice. Lost documents are a serious consequence of almost every disaster. Many persons cannot qualify for insurance, disaster assistance or public benefits without documentation. Individuals must replace lost documents as soon as possible to avoid interrupting essential services or benefits.

I. GENERAL INFORMATION

First, check safe deposit boxes and other safekeeping places. They may contain an original or copy of important documents.

Second, check with the appropriate agency to get the most current information regarding replacement of documents.

Third, remember that there may be a fee to process requests or to obtain certified copies.

Fourth, find out whether it is faster to go to the office that has the document or whether you must request the information by mail or FAX. In many cases, agencies take several weeks to process requests by mail.

II. VITAL RECORDS

A. In General

Vital records are official certificates of every birth, death, marriage and divorce. They are on file in the locality where the event occurred. In California, this is the county where a person was born, died, married or divorced.

B. Births, Marriages and Deaths

1. County Recorder's Office -- County Seat

The County Recorder's office in the county where the event occurred is the office to contact for copies of these records. The County Recorder's office is a county office usually located in the county seat where the local Board of Supervisors and other county offices are located. Call to find out the hours of operation and procedures. If documents are needed quickly, bring a check to cover the fees and go directly to the office.

2. Information Needed for Birth or Death Records

If requesting the information by mail or in-person, have the following information ready:

   a. Full name of the person whose record you need;
   b. Sex;
   c. Parent's names, including maiden name of mother;
   d. Month, day and year of birth or death;
   e. Place of birth or death (city or town, county and state -- also name of hospital, if known);
   f. Purpose for which copy is needed; and
   g. Relationship to person whose record is being requested.

3. Information Needed for Marriage Records

Give the following information for marriage records:

   a. Full names of the bride and groom;
   b. Month, day and year of marriage;
   c. Place of marriage (city or town, county and state);
d. Purpose for which the copy is needed; and

e. Relationship to persons whose record is being requested.

C. Divorces and Dissolutions

In California, the Clerk of the Superior Court or the Family Law Court Clerk has the records of all divorces, also known as dissolutions.

To get divorce or dissolution records, you must provide the following information:

1. Full names of husband and wife;
2. Date of dissolution;
3. Place of dissolution;
4. Type of Final Judgment;
5. Purpose for which copy is needed; and
6. Relationship to persons.

In general, if you do not have exact dates, the office will charge a fee to locate the documents. If you go to the Superior Court Clerk's office, you may search for the documents yourself. Many offices have computer lists or microfiche lists that are alphabetical.

D. Basic Facts To Get a Record by Mail or FAX

If you know where the records are kept, but cannot go in person to replace them, follow the steps outlined:

1. Telephone first to get information;
2. Write to the correct office:
   County Recorder's Office
   Birth, Death and Marriage Records
   Correct Address
   County Seat, California, Zip Code;
3. Include the information listed above and check or money order made out to the correct county official for the fees; and
4. For certified copies, ask for certification and pay the correct fee for the number of copies that you want.

Do not send cash.

E. For General Information in California

For information on how to replace vital records of events that occurred in California call the Office of Vital Records at 916-445-2684. This is an automated line with information in Spanish and English.

F. For Information about Other States

For information on how to replace vital records of events that occurred outside California obtain the publication "Where to Write for Vital Records."

Any individual can obtain a copy as follows:

1. Call the Superintendent of Documents at 202-512-1800;
2. FAX the Superintendent of Documents at 202-512-2250;
3. Write to: Superintendent of Documents
   P.O. Box 371-954
   Pittsburgh, PA 15250-7954; or
4. Visit the nearest Government Printing Office bookstore which is usually located in the Federal Building of most large cities.
III. FEDERAL DOCUMENTS

A. Federal Information Center

For general information about how to get information or documents from any agency call 1-800-688-9889 or TDD 1-800-326-2996. Check the Government Listings of the White Pages of the phonebook to get addresses and local phone numbers. Many agencies have toll-free (800) lines which provide information on various services available including how to replace lost documents.

B. Social Security Cards

The Social Security Administration will replace a lost Social Security card. Individuals can go to their local district office or call 1-800-772-1213 for forms and information. Social Security requires individuals to fill out a lost card form and provide one type of identification. The identification must be an original or certified copy.

C. Medicare Cards

The Social Security Administration will also replace lost Medicare cards. Call 1-800-772-1213 or go to the local district office for information regarding a free replacement.

D. Veterans Administration

Each county in California has an office of Veteran's Assistance. Call 1-800-827-1000 to get information on document replacement and veteran's benefits during a disaster. The TDD number is 1-800-829-4833. Look in the Federal listings of the Government Pages of the White Pages.

E. Immigration and Naturalization Service (INS)

Immigrants and naturalized citizens face great difficulties if they do not have documentation of their status. They cannot work and they may be subject to deportation. The INS has different forms to replace different documents. There are frequently significant time delays in obtaining replacement documents. To order forms, call 1-800-870-3676. Local offices also have forms; to call the nearest INS office look in the Government Listings of the White Pages under Federal Government, Department of Justice.

To replace a work registration or "green" card, an individual must fill out a Form I-90 (Application by Lawful Permanent Resident for new Alien Registration Receipt Card). Individuals must submit a completed I-90 in person at the nearest office of the Immigration & Naturalization Service. Applicants for replacement cards must also submit two color photographs taken within the last 30 days. They must bring a check or money order to cover the processing fee. INS will fingerprint each individual.

F. Passports and Department of State Documents

Individuals with lost visas or passports may get replacement documents from the Department of State. Some local post offices and federal courthouses have the forms for passports. Check the Federal Government Listings of the White Pages of the phonebook for the number of the Passport Agency.

IV. PERSONAL DOCUMENTS

A. Driver's License/Vehicle Registration/Certificate of Title

To replace a driver's license, vehicle registration or certificate of title, go to the nearest office of the Department of Motor Vehicles (DMV). Also, verify with DMV about waiver of penalties and extensions for overdue registration. If known, it is helpful to have the vehicle identification number.
B. Insurance Documents

To obtain insurance policies, information about coverage and to make a claim, contact the insurance agent or insurance company directly. Most insurers and insurance industry groups set up special numbers for policy holders after a disaster. Call Directory Assistance at 1-800-555-1212 for the number of a particular insurance company.

C. Bank Accounts/ATM Cards

Contact appropriate financial institutions to replace bank passbooks, checkbooks, ATM and/or credit cards and safe deposit box keys. Most banks have (800) numbers to report lost or stolen cards. Call this number immediately to report a lost or stolen card. Individuals must go to the branch where they opened their account, which has their original signature to obtain immediate replacement cards, check books and other bank books, if they have no identification.

D. Wills

To obtain a copy of a will, trust or other testamentary instrument, contact the attorney who prepared the document. If the attorney does not have a copy, individuals should prepare a new will or other document.

E. Deeds

Certified copies of deeds to real property are available at the County Recorder's office in the county where the property is located. The following information is needed:

1. Current owner's name(s);
2. Property address;
3. Seller's name;
4. Date of the recording; and
5. Document number.

If a person does not have detailed information, the Recorder's office may charge a fee to search the records for the correct document.

F. Court Records

First, determine in which court the action took place: Superior Court, Probate (wills, adoptions, guardianships), Family Law (dissolutions of marriage, custody decrees, parentage decrees, child support orders, restraining orders), Juvenile Court (documents may be sealed) or Criminal Courts, Municipal Court (landlord-tenant disputes, debtor-creditor) or Small Claims Court.

Contact the clerk's office of the appropriate court where the documents are on file. Call the clerk of the court or the executive office of the courts to find the correct courthouse. Many counties have different physical locations for different court files. In some instances, an individual must locate the record on microfiche and must return to check the file and obtain a copy. In California, you must have the year, the names of plaintiff and defendant and, if possible, the case number.

G. Food Stamp Identification, MediCal Cards/Stickers

The local Department of Social Services office will replace documents, checks and stickers for recipients of public benefits. There is an expedited emergency procedure for all individuals irrespective of the crisis. Individuals must ask for the expedited procedure.

H. Unemployment Insurance or State Disability

Check with the local office of the Employment Development Department for replacement information or documents.
I. Credit Cards

Banks and other institutions have toll-free (800) numbers to report lost or stolen credit cards. Individuals should call immediately to report the loss and obtain replacement cards. The cards will usually only be sent to the original address. This may pose a problem if the home is destroyed and the family is living in temporary shelter. Some credit card programs have local offices or banking institutions where replacement cards can be obtained.
# Section 13C: EMPLOYMENT ISSUES

## I. WAGE AND HOUR ISSUES
- A. General Information
- B. Post-Disaster Live-in Employment
- C. Termination of Employment
- D. Remedies for Injured workers

## II. EMPLOYMENT DISCRIMINATION

## III. WRONGFUL TERMINATION

## IV. FAMILY AND MEDICAL LEAVE

## V. WORKERS’ COMPENSATION
- A. In General
- B. Claims Process

## VI. STATE UNEMPLOYMENT INSURANCE

## VII. STATE DISABILITY INSURANCE

## VIII. SOCIAL SECURITY DISABILITY INSURANCE

## IX. IMMIGRATION
EMPLOYMENT ISSUES

During a disaster traditional statutory rights do not end. Attorneys who advise clients should be sure to look to remedies that involve existing law.

IMPORTANT NOTE: The information contained in this section is designed to allow a volunteer attorney to provide preliminary guidance to a disaster victim with employment-related problems. Because of the complicated nature of such cases, clients should be advised to seek the advice of an experienced employment attorney.

I. WAGE AND HOUR ISSUES

A. General Information

Employers have a responsibility to pay workers the statutory minimum wage or contracted wages. Workers are entitled to overtime pay for hours worked in excess of 8 hours per day. Employers cannot use a disaster as an excuse to violate hours and wages laws. The current Federal minimum wage is $4.75 per hour as of October 1, 1996. The current State minimum wage is also $4.75 per hour as of October 1, 1996. The State minimum wage will increase to $5.00 per hour on March 1, 1997, $5.15/hour on September 1, 1997 and $5.75 per hour on March 1, 1998.

Workers are also entitled to premium pay for overtime, as in nondisaster times. Most workers in California are entitled to overtime after 8 or 10 hours per day, as provided for in the Industrial Wage Commission wage order which applies to their occupation or industry. Workers who are covered by federal law are also entitled to overtime after 40 hours per week.

B. Post-Disaster Live-in Employment

During a disaster, individuals may lose their homes. If they accept live-in employment, the employer must still pay them minimum wage and can make reasonable deductions for room and board only if there is a written, voluntary agreement. The maximum an employer can deduct for a room occupied alone is $20 per week and for a shared room, $16.50 per week.

C. Termination of Employment

Since many businesses may suffer damage or economic losses during a disaster, employees may lose their jobs. Employers must still pay employees at the time of termination and provide them with an itemized statement of wages, hours and deductions. Employers who fail to do this must pay up to 30 days waiting-time penalties to the employees, calculated from the date the wages were due until finally paid.

D. Remedies for Injured Workers

Remedies for injured workers include:

1. Demand letter to the employer to pay wages;
2. State Labor Commissioner;
3. Small Claims Court ($5,000 maximum);
4. Municipal or Superior Court; and
5. U.S. Department of Labor, Wage and Hour Division.

The statute of limitations is four years on written employment contracts, three years if the right to wages is provided by state statute (such as minimum wage and overtime laws) and two years on oral contracts. The statute of limitations for violation of federal law is two or three years. The employer has a duty to maintain records of the hours worked by its employees and make the records available for inspection by the employees upon reasonable request.
II. EMPLOYMENT DISCRIMINATION

Disasters are not defenses to actions for employment discrimination, e.g., an employer lays off only women employees during a disaster. Individuals who believe they have suffered discriminatory treatment can file claims with federal Equal Employment Opportunity Commission (EEOC) or with the California Department of Fair Employment and Housing (DFEH). To contact the EEOC, look in the government pages of the White Pages of the phonebook. The DFEH can be reached at 1-800-884-1684 or TDD 916-324-1678. (TDD is for hearing-impaired people.)

Employers may not use a disaster as an excuse to terminate unwanted employees. These employees may have a cause of action under such laws as the Americans with Disabilities Act or state and local disability statutes and ordinances.

Federal law generally covers employers with 15 or more employees and forbids discrimination on the basis of race, religion, sex, national origin, age (40+ years old) and/or disability. Complaints should be filed with the EEOC within 180 days of the discriminatory act. State law, applicable to employers with five or more employees, precludes discrimination on the basis of race, religion, sex, national origin, color, ancestry, physical handicap, medical condition or marital status. Complaints must be filed with the DFEH within one year of the discriminatory act.

State law also forbids employers to discriminate on the basis of sexual orientation. Complaints must be filed with the Labor Commissioner within 30 days of the discriminatory act.

III. WRONGFUL TERMINATION

An employer can discharge an employee for any reason or no reason, with a few exceptions based on public policy or contractual agreements. In the aftermath of disasters which force businesses to close or limit their work, many terminations may occur. However, employers may not use the disaster as a pretext for an illegal purpose:

A. Violation of anti-discrimination laws;
B. Violation of federal or state labor laws (e.g., union organizing);
C. Retaliation for exercising the legal right to file claims (e.g., Labor Commissioner, DFEH, Occupational Safety and Health Administration (OSHA), Workers' Compensation Board);
D. Violation of an employment contract providing for termination with "good cause"; or
E. Violation of public policy (e.g., refusal to engage in illegal activities).

IV. FAMILY AND MEDICAL LEAVE

State and federal law entitle many employees to a 12-week unpaid leave because of the serious illness of an employee or that of his/her immediate family member or because of the birth or adoption of a child. Generally, employees who have been employed for at least a year and for 1,250 hours in the year preceding the leave and who work for an employer who employs at least 50 workers within 75 miles are covered. This federal law is enforced by the U.S. Department of Labor, Wage and Hour Division. State law is enforced by DFEH.

V. WORKERS' COMPENSATION

A. In General

Workers who are injured in the course of their employment and because of their employment and who become physically or mentally ill because of their jobs may apply for Workers' Compensation benefits. During a disaster, individuals who are injured "due to the disaster" only should apply for Disaster Unemployment Assistance (DUA) (See Section 10). However, if the employee is injured during a disaster but the injury would not have happened if it were not for the work s/he was doing, Workers' Compensation rules apply. One should note that stress-related claims in Workers' Compensation and under Disaster Unemployment Assistance may be more difficult to prove than they previously were due to changes in the law. A competent Workers' Compensation attorney should advise on this matter.
B. Claims Process

An injured worker should see a doctor immediately to document claims for Workers' Compensation. The employer must provide medical treatment for a work injury and must refer the worker to their doctor, or the worker has a free choice of physicians. The employer must provide claim forms for the employee to file a Workers' Compensation claim. A claim must be filed within one year from the date of the injury in most circumstances, unless the employer provides benefits which extend the filing time to five years. For uninsured employers, workers can bring claims to the California Uninsured Employers Fund and also have a right to sue the employer for negligence in civil court.

The State Bar of California has a program to certify specialists in Workers' Compensation law. To obtain a list of current certified specialists, contact the Legal Specialization Unit of the State Bar's Office of Certification by calling 415-241-2100.

VI. STATE UNEMPLOYMENT INSURANCE

Employees whose jobs end for traditional employment reasons -- end of the agricultural season, manufacturing plant closings, school year ends, quitting for good cause or employment termination not related to misconduct -- remain eligible for regular Unemployment Insurance (UI) benefits. In addition, workers who are unemployed due to the disaster but are entitled to regular UI must exhaust their regular UI benefits before they can receive DUA. The governor may waive the one-week waiting period for regular UI during disasters. See Government Code § 8571. All of the nondisaster rules apply. These include sufficient earnings during the base period, meeting the separation requirements and other UI rules. They are entitled to the same processing and appeals as workers during nondisaster times. However, if they are found ineligible for regular UI, they should explore the possibility of obtaining DUA. UI disqualifications may also prevent a worker from obtaining DUA (See Section 10).

VII. STATE DISABILITY INSURANCE

Individuals who are ill or are injured in a nonwork-related accident may be eligible for State Disability Insurance (SDI). The illness or injury may be physical or mental. This disability program is a short-term disability program for workers who suffer an injury or illness which prevents them from doing their present job.

First, the employer must contribute to the program for the employee. Paystubs will note an SDI deduction for an individual if s/he is covered. Second, the employee must have medical documentation that they are unable to work. Examples of injuries that qualify an employee for state disability include broken limbs and surgery that requires time in bed.

SDI is different from Workers' Compensation, which is for on-the-job injuries. Individuals may not collect duplicate benefits for Workers' Compensation and State Disability Insurance. However, Workers' Compensation benefits may be delayed while an employer challenges the claim. An employee may apply for SDI and the State will be reimbursed when the employee prevails on the Workers’ Compensation claim. SDI is also different from Social Security Disability Insurance (SSDI), which is for permanent disability.

Applicants apply for SDI at the local Employment Development Department (EDD) office. The same rights and appeals applicable to UI apply to SDI. SDI is available for up to six months. However, the maximum weekly SDI benefit is greater than the maximum weekly UI benefit.

VIII. SOCIAL SECURITY DISABILITY INSURANCE

Individuals who are disabled and unable to work for a period of more than one year or who have a terminal condition and whose employers have contributed funds to Social Security Disability Insurance (SSDI) may be eligible for this federal insurance program. The amount of funds a person receives through this program depends on the contributions made. A person does not have to meet federal poverty guidelines to qualify for SSDI.

"Disability" is defined as:

... the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. To meet this definition, you must have a severe impairment, which makes you unable to do your previous work or any other substantial gainful activity which exists in the national economy. To determine whether you
are able to do any other work, we consider your residual functional capacity and your age, education, and work experience.

20 CFR § 404.1505.

The Social Security Administration runs this program. Individuals must provide medical documentation that they are unable to work at any job. Their doctors must show that they suffer from a serious impairment that prevents them from working for more than 12 months or is terminal. The doctors' reports must show, if possible, that the individual suffers from a physical or mental impairment that is included among categories of "Listed Impairments".

If a person's disability is serious, but not as serious as those in the listings, a finding of disabled can still be possible in view of the person's residual functional capacity, age, education and work history. Advancing age, lack of transferable skills, the absence of any recent work experience and/or recently completed job training or education can all work in favor of a finding of disabled for people who are in their 50's or above. Generally, it is more difficult for younger individuals, i.e., those under 50, to prove disability, regardless of their particular vocational profile.

Individuals apply at their local Social Security District Office. The process for applications generally takes at least six months.

If a claimant loses at the Initial Determination Stage, s/he can request a reconsideration. A request for reconsideration must be made within 60 days of the initial denial. If s/he loses at reconsideration, the appeals process moves to a hearing before an Administrative Law Judge. A claimant must request a hearing within 60 days of the denial or reconsideration. A hearing procedure can take up to one year. Additional medical evidence can and should be submitted at any stage of the application or appeals process.

IX. IMMIGRATION

Check the immigration section for the types of documentation that workers need to qualify for different immigration categories. See Section 13E. Undocumented workers are not eligible for unemployment insurance or any disability programs, state or federal.
Section 13D: HOUSING

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Note: See Miscellaneous Section for discussion of commercial landlord/tenant issues
This Section of the Handbook addresses tenants' rights under California law when a residential rental unit is damaged or destroyed by a disaster. Refer to Section 7 for a description of FEMA Housing Assistance Programs. For more information about landlord/tenant law, refer to the resources listed in Paragraph VII. of this Section. Refer to Section 13G for information about commercial tenancies.

IMPORTANT NOTE: The information contained in this Section is designed to help a volunteer attorney to provide general information about residential housing issues. Disaster victims should be advised to seek the advice of an attorney experienced in housing law.

I. PRELIMINARY CONSIDERATIONS

When a tenant's unit is damaged or destroyed by a disaster, it is important for advocates to think carefully about remedies under California landlord/tenant law as well as relief that is available through federal housing assistance programs (See Section 7) and other assistance programs.

There are four questions for advocates to ask and analyze to determine how to advise a client about a landlord/tenant claim:

A. How badly is the unit damaged?
B. Does the tenant have a written lease? (Usually, if there is no written lease, then the tenancy is considered as if there were a month-to-month lease.)
C. Does the tenant receive any federal or state housing subsidies, or is the unit a subsidized or public housing unit?
D. Does the tenant want to keep possession of the apartment, leave permanently or move temporarily while the landlord makes repairs?

II. ASSESSING DAMAGE

California law requires landlords to maintain rental units in "habitable condition." Civil Code § 1941.1 requires that dwelling places substantially meet each of the following characteristics in order to be considered habitable:

A. Roof and exterior walls must be waterproof;
B. Windows and doors must be unbroken;
C. Plumbing and gas facilities must be maintained in good working order;
D. Hot and cold running water must be provided;
E. Sewage disposal system must be connected and operational;
F. Heating facilities must be maintained in good working order;
G. Electrical lighting and wiring must be maintained in good working order; and
H. Floors, stairways and railings must be kept in good repair.

For the purposes of this Section, disaster damaged dwelling places can be classified as one of the following:

A. Destroyed: More than one of the above listed facilities no longer exists.
B. Substantially damaged: Any one of the facilities no longer exists or more than one facility does not operate most of the time.
C. Materially damaged: Any one of the facilities is inoperable most of the time or more than one operates sporadically but may be able to be repaired.
D. Minor damage: Any one facility operates sporadically, but may be able to be repaired.

These categories are useful guidelines to help tenants assess their situations, discussed in the Disaster Legal Assistance Manual, Los Angeles County Bar Association, Barristers Disaster Relief Assistance Committee, January 1994. 185 pp. However, the guidelines are by no means definitive rules. Case law merely distinguishes between
uninhabitable dwellings where there is "substantial interference" with the tenant's use of the dwelling and where there are "material" problems.

III. UNIT IS DESTROYED

If the unit is so destroyed that it is obviously not suitable for living, there are not a lot of options to consider. The tenant needs to move out. The questions are primarily financial ones, regarding return of rent, return of security deposit and long-term financial adjustments. The tenant should be eligible for FEMA Temporary Housing Assistance (See Section 7) and may also be eligible for emergency welfare benefits (See Section 12). If the tenant's personal property was destroyed, depending on income, s/he may be eligible for either a Small Business Administration (SBA) personal property loan (See Section 9) or an Individual and Family Program (IFGP) grant (See Section 8).

Unless there is a written lease to the contrary, Civil Code § 1933(4) indicates that the tenancy is terminated when the unit is totally destroyed. This means that the tenant:

A. Should give notice to the landlord;
B. Is free to move;
C. Should be entitled to the return of their security deposit (Civil Code ' 1950.5);
and
D. Should be released from all ongoing obligations.

Tenants in this situation are entitled to obtain access and recovery of any remaining personal property in the unit. If there is a written lease, it may contain other provisions.

IV. UNIT IS SUBSTANTIALLY OR MATERIALLY DAMAGED

This is a more difficult situation to analyze than the prior one. The relevant questions are:

A. Can the unit be repaired?
B. How quickly can it be repaired?
C. Can the repairs be made while the tenant is living in the unit, or will the tenant have to relocate temporarily while the repairs are being made?
D. Does the tenant want to move, or retain possession of the unit and have the landlord make repairs?

A. Tenant Wishes To Permanently Move

If the tenant wants to move, it is important to thoroughly document the extent of the damage before moving. Advise the tenant to:

1. Obtain inspection reports from FEMA inspectors;
2. Obtain certified copies of inspection reports from local city building inspectors (tenant will have to call to request an inspection);
3. Take photographs and record the date the picture was taken, who took the photograph and the subject of photograph;
4. Have reliable witnesses view the premises and keep notes of the date they viewed the premises and what they saw; and
5. List the conditions in the unit.

Tenants who have month-to-month leases (or no lease) can always give 30 days' notice to the landlord and then move. However, a 30-day notice may not be required if the unit is substantially damaged. Written provisions in leases will control other types of tenancies (besides month-to-month tenancies).

If the unit is substantially damaged, advise the tenant to write a letter to the landlord, recording the above findings, stating that the premises are essentially not habitable and that the tenant is considering the lease terminated. California law allows a tenant to terminate his/her tenancy if the "greater part" of the premises "perishes". Civil Code § 1932(2). The tenant should sign and date the letter, then proceed the same as if the unit were destroyed (See Paragraph III.).
If the unit is materially damaged, the tenant cannot terminate the lease without informing the landlord about the repair problem and giving the landlord a reasonable time to fix the problem.

B. Tenant Wishes To Retain Possession of the Unit

1. Referrals for Further Assistance

Low-income tenants or tenants in rural areas may not be able to obtain another apartment. Advocates should first advise tenants who want to keep their units about finding emergency housing, using FEMA and emergency assistance programs. See cross-references in Paragraph III.

2. Asserting Tenant's Right To Have Unit Repaired

The advocate should work with the tenant to obtain their rights under the landlord/tenant law to have the landlord make the repairs as fully and quickly as possible. Under California law, the landlord has the responsibility to return the unit to habitable standards. Green v. Superior Court (1974) 10 Cal.3d 616; Hinson v. Delis (1972) 26 Cal. App.3d 62.

   a. Tenant may Vacate Apartment While Repairs Are Being Made

If the tenant chooses to leave temporarily, it's important for the tenant to state his/her intentions to the landlord in writing (and keep a copy of the letter). The tenant must explain that s/he is not vacating or abandoning the unit, but is moving temporarily because of the uninhabitable condition. The tenant should clearly explain the intent to return and continue the tenancy and the fact that s/he may be withholding some rent until the unit is returned to habitable standards. However, if the tenant really wants to retain possession of the disaster-damaged apartment, s/he should strongly consider the small claims court option described below (Paragraph B.2.c) rather than withholding rent and temporarily vacating the apartment. If the tenant withholds rent, the landlord can initiate eviction proceedings (See Paragraph VIII). The landlord is under no obligation to pay for temporary housing. It may be impossible for the tenant to pay for the rental of two apartments at the same time. Perhaps the tenant could go to small claims court first, before moving, to ask the court to order a rent reduction.

   b. Repair and Deduct Statute

If the repair requires less than one month's rent, the tenant may make the repair himself/herself and deduct the cost of repair from rent. Civil Code § 1942. Refer to Paragraph V.A. below before advising tenants about the statute.

   c. Small Claims Court

Tenants can go to Small Claims Court and ask the court for a rent return or an order for the landlord to make the repairs. If the repairs have been cited by an inspector and not corrected for 60 days, Civil Code §1942.4 gives the court authority to not only award damages, but also to compel the landlord to repair the premises.

3. Written Leases and Month-to-Month Tenancies

Advocates should look at any written lease the tenant may have. Keep in mind that a residential tenant cannot be forced to waive his/her right to habitable premises. Civil Code § 1942.1; Knight v. Hallshammer (1981) 29 Cal.3d 46, 171 Cal. Rptr. 707. Unless the tenant is in an unusual, negotiated situation, the above information about enforcement of habitability rights would apply. A tenant with a year lease probably have stronger rights to move back into the unit after its repair than a tenant with a month-to-month tenancy. With a month-to-month tenancy, the landlord could conceivably decide to go out of business and just give a 30-day notice.
V. UNIT HAS MINOR DAMAGE

For tenants with units that have sustained minor damage, most of the advice given in Paragraph IV, above, applies. The tenant should consider emergency housing options and available FEMA benefits (See cross-references in Paragraph III.), document the condition of the unit and write a letter to the landlord. The repair and deduct statute (Civil Code §1942), mentioned in Paragraph IV.B.2.b. could be very useful for tenants who have enough money to use it.

A. The California Repair and Deduct Statute (Civil Code § 1942)

The repair and deduct statute enables tenants to repair the premises themselves and deduct the cost of the repair from the rent, after giving the landlord reasonable notice of the repair problem. Tenants may use this remedy only for repairs that cost less than one month's rent. Eligible repairs under the statute are listed in Civil Code § 1941.1. See Paragraph II. Tenants may use the remedy only twice a year. Due to these monetary limitations, the statute is not useful for many tenants whose dwelling units have substantial damage. Advocates must advise tenants to document the problem before the repair is made, (See Paragraph IV.A.), save receipts regarding the repair and give the landlord reasonable written notice. The landlord may initiate the eviction proceedings if less than the full amount of rent is paid, so it is essential for tenants who use the repair and deduct remedy to have proper documentation. It is good practice to advise tenants to set aside the rent money, if they can, so they can negotiate with the landlord if problems arise.

Unfortunately, many tenants are unable to use the repair and deduct statute because they do not have enough money to pay for the repair. If a tenant has already paid the monthly rent, s/he may not have enough money to pay for the repair. For example, if the disaster occurs at the beginning of the month, it may be 20 or 30 days before the tenant can use the statute and have the problem fixed. In this scenario, the advocate can encourage or assist the tenant to request that the landlord make the appropriate repairs. Eliciting the support of FEMA or city inspectors could be helpful.

B. Small Claims Court

As mentioned above, the tenant may go to Small Claims Court and ask the court to order the landlord to make repairs and/or give a rent reduction until repairs are made. This is safer but may take longer than repair and deduct.

VI. SUBSIDIZED AND RENT CONTROLLED HOUSING

Tenants in subsidized or public housing have a greater stake in retaining possession of their housing. Loss of a unit is much more traumatic to these tenants because it is much harder to find a comparable rent. Tenants with Section 8 vouchers or certificates may find it difficult to locate another landlord who will accept the subsidy, particularly when there are many displaced tenants seeking housing.

There are considerable additional remedies for tenants who live in subsidized or public housing. These landlords cannot unilaterally terminate a tenancy with a 30-day notice or at the expiration of the lease period because "just cause" is required for eviction. This means tenants can be evicted only if there is a cause. Furthermore, under some of these programs, tenants may have relocation rights that are specifically stated in their leases or in the regulations governing the programs. In other words, even if a tenant's unit is destroyed (which will normally terminate the tenancy), if there are other units available to the housing authority or landlord, the tenant may have a right to be transferred to one of those units. It is important to evaluate the nature of the subsidized program and the additional remedies available to tenants.

VII. RETURN OF SECURITY DEPOSIT

Tenants must request return of the security deposit in writing, after moving. Landlords have a period of three weeks, pursuant to California Civil Code §1950.5, in which to return the security deposit or submit an itemized list of the things for which they are withholding money. This is the statutory requirement, but advocates may certainly argue that the landlord should return the deposit sooner if it is necessary to help a tenant relocate after a disaster. Landlords who fail to return a security deposit with bad faith may be subject to statutory damages of up to $600, in addition to actual damages. Civil Code § 1950.5(k). Advocates may refer tenants to Small Claims Court if the landlord wrongfully fails to return the deposit.
In addition to keeping a copy of all correspondence with the landlord, it is important for tenants to thoroughly document the condition of their units and their use of the repair and deduct statute because non-payment of rent subjects tenants to the potential for eviction (unlawful detainer). Advise tenants that if they are personally served with a summons and complaint, they will have only five days to file an answer with the court. With court order, landlords may serve a tenant by posting the summons and complaint on the premises and mailing a copy to the tenant. Advise the tenant to inform the landlord in writing about any temporary address and to periodically check the damaged unit to see if court papers have been posted. Low-income tenants should call their local legal services office for assistance if they receive legal papers regarding an eviction. Other tenants should call the local State Bar-certified lawyer referral service to receive a referral to an attorney. Call the State Bar Office of Legal Services for a listing of legal services offices (415-561-8800 or 1-800-628-4858) or the State Bar Office of Bar Relations for a list of certified lawyer referral services (415-561-8250).

A tenant can raise repair problems or repair and deduct as defenses in an unlawful detainer action. The court can order reduced rent and can require that landlord to make repairs. Code of Civil Procedure § 1174.2.

After a tenant requests that the landlord make repairs or complains about the habitability conditions of a dwelling unit to the local authorities, the landlord cannot retaliate against the tenant. Civil Code § 1942.5. For a period of 180 days following the repair complaint, efforts by the landlord to increase the rent, decrease services or evict the tenant may be considered retaliatory. Civil Code § 1942.5(a). The aforementioned documentation is critical in order for a tenant to prove that an eviction may be retaliatory.

IX. LANDLORD/TENANT LAW RESOURCES

The following books have extensive information about representing tenants in unlawful detainer proceedings.


For subsidized and public housing:


The following material was prepared specifically with post-disaster landlord-tenant issues in mind:

Disaster Legal Assistance Manual, Los Angeles County Bar Association, Barristers Disaster Relief Assistance Committee, January 1994, 185 pp.

"Damaged or Destroyed Residential Rental Units: A Fact Sheet for Landlords and Tenants", State of California Department of Consumer Affairs, Legal Guide LT-6, 400R. Street, Suite 3090, Sacramento, CA 95814-6200, (October 1996).
Section 13E: IMMIGRATION

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IMMIGRATION

OVERVIEW

California has a substantial immigrant population. The diversity of ethnic groups and languages presents a challenge for delivering effective disaster legal assistance. This section is a brief overview of disaster legal issues affecting immigrants. Individuals who need more than brief information and advice should be referred to lawyer referral services or legal services providers specializing in immigration law. For example, questions regarding adjustment of status, naturalization, public charge, detainment by the police or the Immigration and Naturalization (INS) and deportation may arise. In addition, eligibility for many public assistance and disaster relief programs is directly related to immigration status. See Section 11 and Section 12 regarding immigrant eligibility for public assistance. See also Section 5 and Section 7 regarding immigrant eligibility for disaster housing assistance and III. below regarding immigrant restrictions on other types of disaster assistance.

I. CONSIDERATIONS WHEN WORKING WITH IMMIGRANT POPULATIONS

A. Demographics

It is important to consider the demographics of the population affected by a disaster. Before a disaster, staff should collect census data on their geographic area. This data will provide information on the ethnicity of residents, the language groupings, number of single parent households, number of children and elderly in a community, as well as income levels. The census data will indicate the number of persons who are refugees and from what country they have come. Knowledge of the demographics will assist in recruiting the appropriate volunteers.

Compare the legal needs of the survivors of the Oakland Hills Fire with the needs of the survivors of the Northridge Earthquake. In the fire disaster, legal volunteers needed to know about land use and real property issues. Many residents were middle income and some were elderly. The majority were English-speaking. In the earthquake, there was a large number of undocumented non-English speaking survivors. A large number of persons were tenants, not homeowners, and many were low-income persons who lost their jobs as a result of earthquake damage.

B. Ethnicity and Language

Survivors will react to and recover from disasters within the context of their ethnic background and cultural viewpoint. Survivors with limited English-speaking skills may have difficulty communicating needs except in their native language. Volunteers should include bilingual and bicultural persons. If such persons are not available, efforts should be made to recruit volunteers with the appropriate ethnic backgrounds and language skills from community-based organizations.

In working with limited English-speaking persons, it is important to speak clearly and simply. Try to avoid legal jargon. Check frequently to make sure that the person has understood what you have said and ask him/her to repeat your instructions. Written information and instructions in the person's primary language would be ideal.

In some cultures people will always agree with what the authority figure says, even if they do not understand. If a child or friend comes to act as an interpreter, inform the person that he/she has a right to an adult volunteer who speaks his/her language. Make sure that the child or friend does in fact understand what you are saying and is not merely nodding politely.

C. Cultural Issues

Even if immigrants understand English, there are frequently cultural barriers to utilizing government programs or accepting assistance from private agencies. Many immigrants have informal leadership structures within their community which parallel the structures and customs in their home countries. They may be reluctant to provide basic information to strangers because of fears of retribution. If the pattern in their home country was for families to tolerate substandard and dangerous conditions, they may be fearful to seek help. Some immigrants may consider
assistance from outside the family a "handout" and would be inhibited from obtaining essential services.

Recordkeeping in different cultures varies. Individuals from cultures where oral contracts and a handshake are the basis for economic activity may have difficulty understanding the need for written documentation. Even the most knowledgeable person may find it difficult to locate records during a disaster. Providing information on how to obtain duplicate records would be helpful.

II. IMMIGRATION CATEGORIES

The Immigration and Naturalization Service (INS) has promulgated regulations to define categories of noncitizens who are considered "lawfully present" in the United States. 8 CFR § 103.12.

Persons who are lawfully present in the U.S. include the following categories. For each of these categories we have listed examples of documents that individuals may have to show that they have this status. However, these examples are not exhaustive. Also, individuals who have lost INS documents commonly experience long delays in obtaining replacement documents.

A. Citizens or Nationals of the United States

All persons born in the United States, or U.S. territories such as Puerto Rico and the U.S. Virgin Islands, are U.S. citizens and nationals. Persons born outside the U.S. who have one parent who is a United States citizen may also be U.S. citizens. This category includes persons who are naturalized citizens. Persons who were born in certain U.S. outlying possessions -- American Samoa and Swains Island -- are nationals of the U.S. but not U.S. citizens.

Documentation includes birth certificates, baptismal certificates, visas, passports and naturalization certificates.

B. Permanent Residents

This category includes all persons who have been granted the right to permanently reside in the United States. Many of these persons may have lived in the United States for decades. These persons have most of the rights of citizens, including the right to work. However, they cannot vote in national elections.

Most permanent residents have "alien registration receipt cards" (Form I-551 or I-151), which are commonly known as "green cards" even though they have been issued in different colors over the past several decades. Other evidence of permanent residence includes form I-181 (Memorandum of Creation of Lawful Permanent Residence), form I-327 (Reentry Permit), and passports or I-94 forms stamped "admitted for I-551."

C. Refugees and Asylees

These are persons who cannot return to their home countries because of fear of persecution or displacement as a result of war or natural disaster. The reasons for their fear of persecution may include race, religion, nationality, political affiliation, etc. A refugee is someone who has been granted refugee status outside the United States or at a border. An asylee is a person who has applied for and been granted asylum within the United States.

Documentation of this status may include I-94 forms stamped "refugee," "asylee," "207" or "208;" form I-571 (Refugee travel document); form I-688B or I-766 (employment authorization document) coded 8 CFR § 274a.12(a)(3) (Refugee) or (a)(5) (Asylee); or an order granting asylum from INS, the immigration court, the Board of Immigration Appeals, or a federal court.
D. Persons Granted Withholding of Deportation or Withholding of Removal

Another group of immigrants who cannot return to their home countries because of fear of persecution are individuals who have been granted withholding of deportation. Because of a change in the law that applies to individuals whose removal proceedings begin on or after April 1, 1997, this relief will be called "withholding of removal" (INA § 241(b)(3)).

Documentation of this status may include I-94 forms stamped "§ 243(h)" or "§ 241(b)(3);" form I-571 (Refugee travel document); form I-688B or I-766 (employment authorization document) coded 8 CFR § 274a.12(a)(10) (withholding of deportation); or an order granting withholding of deportation or withholding of removal from INS, the immigration court, the Board of Immigration Appeals, or a federal court.

E. Conditional Entrants

Persons who were admitted to the U.S. as "conditional entrants" prior to April 1, 1980 are also considered to be lawfully present. Conditional entrants under former § 203(a)(7) of the INA were the functional equivalent of refugees prior to the enactment of the 1980 Refugee Act. These individuals may have a passport or form I-94 stamped "conditional entrant" or "§ 203(a)(7)."

F. Parolees

Persons who have been granted parole under INA § 212(d)(5) by the INS to come into the United States for a period of at least one year are considered to be lawfully present in the U.S. All other persons who have been granted parole are also considered to be lawfully present, unless they were paroled under INA § 212(d)(5) for exclusion proceedings, or under 8 CFR § 212.5(a)(3) for prosecution. These individuals may have a passport or form I-94 evidencing the grant of parole.

G. Persons Inspected and Admitted

Persons who have been inspected and admitted to the United States and who have not violated their status are considered lawfully present. This group includes all of the many visa categories of nonimmigrants. These individuals are admitted under a particular visa category that is based on the purpose for which the individual is admitted. The visa categories of nonimmigrants are known by the letter of the subparagraph of INA § 101(a)(15) that pertains to the category, and these categories range from A through S. Some common examples are visitors for pleasure or business (B-1 or B-2 visas), students (F visas), temporary workers (H visas), exchange visitors (J visas), and religious workers (R visas). The spouse and minor children of the principal alien may also be admitted in the same status. Nonimmigrants may have a passport, form I-94 evidencing nonimmigrant status, or Border Crossing Card.

This group also includes miscellaneous other categories of noncitizens not specified in the INA's nonimmigrant categories. Some examples include aliens admitted to the U.S. as citizens of the Federated States of Micronesia or of the Marshall Islands pursuant to agreements between the U.S. and these former trust territories (authorized by treaty to reside and work in the U.S.), and American Indians born in Canada who possess at least 50% blood of the American Indian race (INA § 289).

H. Temporary Residents

Persons who have temporary resident status under the legalization or Special Agricultural Worker (SAW) provisions of the INA (INA §§ 210 or 245A). Documents include forms I-688, 688A, 688B or 766 indicating issuance under INA § 210 or § 245A or 8 CFR § 274a.12(a)(2).

I. Persons Granted Temporary Protected Status

Temporary Protected Status (TPS) is granted to individuals where the attorney general has determined that because of civil war, natural disasters, or other appropriate circumstances, the U.S. should not normally deport individuals to a country. Persons granted TPS are authorized to work, may not be deported, and are considered lawfully present. Documents include forms I-688B or 766 (employment authorization) indicating issuance under 8 CFR § 274a.12(a)(12).
J. Cuban-Haitian Entrants

Nationals of Cuba or Haiti who were paroled into the U.S. prior to 1982 are also considered lawfully present. These individuals may have passports or form I-94 indicating parole status.

K. Persons Granted Family Unity Status

Persons whose parent or spouse obtained permanent residence through amnesty and petitioned for them to be granted permanent residence may be granted family unity status if they were in the United States on May 5, 1988. Persons with family unity status are authorized to work and may not be deported. They may have to wait several years to be granted permanent residence because of backlogs in the availability of immigrant visas. Documents include forms I-688B or 766 (employment authorization) indicating issuance under 8 CFR § 274a.12(a)(13), form I-817 (application for family unity), I-797 (notice of action indicating grant of family unity) or other notice granting family unity.

L. Persons Granted Deferred Enforced Departure Status

Deferred Enforced Departure (DED) status is granted to members of particular nationality groups who are permitted to remain in the United States and to work. Documents include forms I-688B or 766 (employment authorization) indicating issuance under 8 CFR § 274a.12(a)(11).

M. Persons Granted Deferred Action Status

Deferred action is a status that INS grants to individuals where the agency decides as a matter of discretion not to proceed with deportation or removal. Documents include forms I-688B or 766 (employment authorization) indicating issuance under 8 CFR § 274a.12(c)(14), or a letter from INS granting deferred action.

N. Applicants for Adjustment of Status

This category consists of persons who may remain in the United States because they are applying for permanent resident status. These persons may be granted work authorization. The INS considers that individuals who are the spouse or child of a U.S. citizen whose visa petitions have been approved and who have pending applications for adjustment of status are lawfully present in the U.S.

Documentation may include form I-485 (application for adjustment of status); I-360 (application to qualify as abused spouse or child under Violence Against Women Act); EOIR-42 (application for cancellation of removal and adjustment of status); I-797 (notice of action) reflecting approval of visa petition or receipt of I-485; I-688B or 766 (employment authorization) indicating issuance under 8 CFR § 274a.12(c)(9) (adjustment of status) or (c)(16) (registry); I-512 (advance parole) or I-94 indicating entry to pursue § 245 application.

O. Applicants for Asylum, Withholding of Deportation, or Withholding of Removal

This category includes persons applying for asylum, withholding of deportation, or withholding of removal, because they fear persecution in their home country. The INS considers these applicants to be lawfully present in the U.S. if they have been granted employment authorization. Applicants under 14 years of age (who may not apply for employment authorization) are considered lawfully present if their asylum or withholding application has been pending for at least 180 days.

Documentation includes forms I-688B or 766 (employment authorization) indicating issuance under 8 CFR § 274a.12(c)(8) (asylum) or (a)(10) (withholding of deportation), or form I-589 (application for asylum).
III. RESTRICTIONS ON DISASTER ASSISTANCE

A. Proposition 187 Does Not Restrict Disaster Assistance

In November 1994, California voters approved Proposition 187. It seeks to deny "social, educational and medical" benefits to undocumented persons.

Many lawsuits have challenged the constitutionality of the proposition. Both state and federal courts have enjoined the implementation of the proposition. As of the printing date of this publication, Proposition 187 was not a factor should a disaster strike California.

B. Emergency Supplemental Appropriations for Additional Disaster Assistance Act of 1995

1. Limits on FEMA Disaster Housing Assistance

On July 27, 1995, Congress passed the Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-Terrorism Initiatives, for Assistance in the Recovery from the Tragedy that Occurred at Oklahoma City, and Rescissions Act (Act), Public Law No. 104-19. Section 2006 of the Act prohibits FEMA as a federal entity from providing non-emergency disaster assistance from the Act to individuals "not lawfully within the United States." Non-emergency disaster assistance includes all FEMA Disaster Housing Programs in Section 408 of the Stafford Act: Rental Assistance, Mortgage and Rental Assistance, Home Repair Assistance and Transient Accommodations. Prior Law in 1994 had prohibited FEMA from providing RA and MRA for more than 90 days to persons not lawfully present in the U.S.

In order to be eligible to apply for FEMA Disaster Housing Assistance and prior to the receipt of such assistance, applicants must sign a self-certifying declaration attesting that they are lawfully within the United States (beginning with FEMA-DR-1067, United States Virgin Islands, declared September 16, 1995). They are also asked to provide a form of identification which does not have to be official documentation and which is solely for the purpose of confirming their identity; that is they are who they say they are. It is not to establish citizenship or immigration status.

After closure of the application period, FEMA will conduct a random audit of the self-certifying declarations, requiring applicants to provide documentary evidence of the lawful status they declared.

2. Definition of "Lawfully Within the United States"

   a. As discussed above, INS promulgated regulations to define "lawfully present in the United States" for purposes of benefits under title II of the Social Security Act (8 CFR § 103.12). The categories of those considered to be "lawfully present" are also listed above.

   b. FEMA's self-certifying declaration form provides three categories of persons who are lawfully in the United States: 1) citizen or national of the United States; 2) lawful permanent resident; and 3) person otherwise lawfully present in the United States. Those persons who would be considered lawfully within the United States for purposes of FEMA's self-certifying declaration include, but are not limited to:

   • United States citizens or permanent residents;
   • Immigrant visa holders;
   • Non-immigrant visa holders;
   • Refugees;
   • Asylees.

As of the printing date of this publication, FEMA anticipates amending its definition of "lawful presence" in light of welfare reform legislation.
3. **Other Forms of Disaster Assistance**

a. American Red Cross assistance, which can include emergency housing assistance, and the following emergency disaster assistance are **not** included in the 1995 Act's restrictions requiring lawful presence: search and rescue; emergency medical care, mass care and shelter; clearance of roads and construction of temporary bridges and essential community services; risk warnings; dissemination of public information and assistance regarding health and safety measures; provision of food, water, medicine and other essential needs.

b. Individual public benefits programs including Food Stamps, Aid to Families with Dependent Children and Medi-Cal also have restrictions on immigrant eligibility that need to be checked individually. See Section 11 and Section 12.

c. Although FEMA will not process applications for FEMA Disaster Housing Assistance unless a self-certifying declaration has been signed, this does not affect FEMA's processing of inspections for transmission to the State for Individual and Family Grant Program (IFGP) assistance. The State has the option to decide if it wants IFGP cases transmitted without a signed self-certifying declaration.

d. Persons who are undocumented and without proper INS work authorization are not eligible for Disaster Unemployment Assistance (DUA) or Unemployment Insurance (UI). See Section 10.

e. The Small Business Administration (SBA) does not require proof of immigration status as of the printing date of this publication. However, Social Security numbers are required for SBA disaster loans.

Please note that the Attorney General has the authority to designate certain programs, services or assistance, after consultation with appropriate Federal agencies and departments, which: 1) deliver in-kind services at the community level; 2) do not condition the provision of assistance on the recipient's income or resource; and 3) are necessary for the protections of life or safety, for all persons, regardless of immigration status. This authority is granted in The Personal Responsibility and Work Reconciliation Act of 1996. As of the printing date of this publication, FEMA continues to follow the 1995 legislation referenced above for its disaster housing assistance programs.

C. **Common Problems**

1. **Citizen Children and Undocumented Parents or Siblings**

If the minor children of undocumented parents were born in the United States, these children are potentially eligible for services and public benefit programs.

Minor children cannot apply for Disaster Unemployment Assistance for their parents. They can obtain public benefits for themselves but not for their undocumented parents or siblings.

For purposes of eligibility for FEMA Disaster Housing Assistance, the self-certifying declaration should be signed at the time of the FEMA inspection by the applicant or by another adult household member lawfully present in the United States who can represent the household and who either resides in the same damaged structure and who lived in the structure at the time of the disaster or whose loss of income forms the basis for a MRA application.

2. **Documented Persons whose Status Changes**

If an applicant is "lawfully within the United States" at the time of the disaster and application for Disaster Housing Assistance, but subsequently falls out of lawful status, that person is eligible for disaster housing assistance covering the time for which he/she was lawfully within the United States.
IV. FEMA AUDIT PROCEDURES

A. Verification Procedures

FEMA has a computer program that randomly select applicants who received Disaster Housing Assistance for audit. Audited applicants will receive a return receipt requested letter requesting that they provide documentary evidence of legal presence in the United States by mail to FEMA at the address indicated in the letter. The letter will list various forms of acceptable documentation and will provide the toll free helpline number for applicant questions.

B. Role of the Immigration and Naturalization Service

The INS may verify the documents and information provided by the applicant to FEMA for purposes of the audit. The INS does not receive any other information FEMA may have in its records about the applicant relating to the applicant's application for disaster assistance such as the applicant's address and phone number.

FEMA makes the final determination, not the INS, as to whether an applicant is lawfully within the United States for purposes of eligibility for its Disaster Housing Assistance Program. The role of the INS is to provide FEMA with technical support and access to its information resources to help FEMA verify the information provided by the applicant. However, the INS has reserved the right to pursue criminal prosecution for violation of federal law.

C. Recoupment of Assistance from Ineligible Applicants

FEMA may initiate recoupment proceedings against any audited applicant who fails to provide suitable documentation to verify that he/she is lawfully within the United States. The applicant will be required to return any Disaster Housing Assistance provided and will not be eligible to receive any further assistance from FEMA's Disaster Housing Programs for that disaster, or any subsequent disasters unless the applicant subsequently provides suitable documentation of lawful presence. The applicant will be advised in writing of the decision and appeal rights and he/she or his/her authorized representative may request in writing copies of the documents upon which FEMA based its decision.

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INSURANCE

OVERVIEW

Insurance benefits may provide disaster victims with the fastest source of assistance following a major disaster. Due to the time-sensitive nature of most insurance coverage, it is important to encourage victims with insurance to:

1. **File a claim** with their carrier immediately if they haven't done so already and despite what their insurers may have told them about coverage; and
2. **Take photos** of, videotape and inventory their damage.

It is likely that several weeks following the disaster, people who have already filed claims for damage to a home, small business, vehicle or person but have not obtained satisfactory responses from their insurance companies will also seek legal advice on how to proceed. Careful review of insurance policies is in order in these cases. It is also important to consider that those without personal insurance (e.g., renters) may be able to recover their losses in part from other sources (e.g., landlords).

**IMPORTANT NOTE:** The information contained in this section is designed to help a volunteer attorney provide general information about insurance issues. Disaster victims should be advised to seek the advice of an attorney experienced in insurance law.

I. BASIC INSURANCE ISSUES

A. Preliminary Steps in a Disaster

Immediately following a major disaster few victims think about taking pictures of their damage for the insurance agent or filling out claims forms. They are usually concerned about obtaining the necessities of life for their families and dealing with their losses. Because of this natural reaction, it is very important to urge all disaster victims to immediately begin taking the steps necessary to ensure the greatest insurance protection.

Because of the very complicated contract nature of most policies, any guidance provided to victims by a volunteer attorney will be of only a general nature. All clients should be advised to:

1. Read their policy;
2. Contact their agent; and
3. Preserve evidence of their damage with pictures, videotapes and written inventories.

Disaster victims also need to be advised to apply for disaster relief from FEMA or the Individual and Family Grant Program (IFGP) within the filing deadline, and also to file their proofs of claim under any applicable insurance policies. FEMA and IFGP will not pay for insurance losses that are actually covered/paid, but applications will be processed and provided under FEMA programs whether or not insurance proceeds have actually been paid. To assist volunteer attorneys in giving common sense guidance to victims, several areas of concern are discussed below.

B. Locate the Insurance "Policy" or "Contract"

1. **Loss during Disaster**

The loss or destruction of personal papers creates many problems for disaster victims. Since it is too late to advise clients to keep copies of their papers in a safe deposit box, review with them the document replacement tips offered in this manual. See Section 13B. Insurance policies should be easy to obtain.
2. Obtain a Copy of Lost/Destroyed Policy

The first step in gaining a copy of a lost or destroyed policy is to contact the insurance company. Following major disasters, many insurance companies establish special hotlines for just this purpose. Remember to advise the client to ask for the entire policy, not just the cover page or recitals. Under California law, insurance companies must provide a copy of the entire insurance contract.

C. Types of Policies and Basic Features

1. Homeowners Insurance

Many homeowners maintain insurance to cover physical damage to their home and to cover liability for third party injuries which occur on their property. Unfortunately, most homeowners policies do not provide coverage for floods and earthquakes, unless specific riders are purchased for this coverage.

The State of California recently implemented the California Earthquake Authority (CEA) Insurance Program. The CEA program is a publicly managed state agency that will provide insurance coverage for earthquake damage to residential property owners, mobile homeowners and renters. The CEA was conceived as a plan to make earthquake insurance available to consumers, and at the same time, reinvigorate the homeowners insurance market. For more information please call the California Earthquake Authority in Sacramento at 916-492-4300.

a. Coverage for Wind-Driven Rain Damage

Damage caused by rain entering through wind-damaged windows, doors, or a hole in a wall or the roof, resulting in standing water or puddles, is considered windstorm damage. Windstorm damage is generally covered by homeowners insurance not flood insurance.

b. Coverage for Flood Damage

Nationally, over 90% of all disasters are flood-related. Federal flood insurance for building and contents coverage is available in communities participating in the National Flood Insurance Program (NFIP) which is managed by FEMA and can be purchased through licensed property/casualty insurance agents or through most companies selling homeowners insurance. Please note that contents coverage is also available to renters. Flood insurance may also be available from some private carriers. Actual cost varies according to the property, liability limits and deductible selected by the insured. The NFIP's Preferred Risk Policy which has a low annual premium is designed for residential properties located in low to moderate flood risk zones. Flood insurance claims are paid whether or not a disaster is declared. One-third of NFIP claims come from outside high risk flood areas. Generally, proofs of loss must be filed within 60 days; check the policy for deadlines.

The NFIP defines flooding as a general and temporary condition during which the surface of a normally dry land is partially or completely inundated. Two adjacent properties or two or more acres must be affected. Flooding can be caused by rising bodies of waters including the overflow of inland or tidal waters; runoff of surface waters from any source such as heavy rainfall; mudslides or mudflows caused by flooding; and the collapse or destabilization of land along bodies of water from erosion by waves or water currents exceeding normal, cyclical levels. Flood damage coverage is generally not provided in homeowners insurance policies.

Different rules apply to FEMA and other federal disaster assistance in floods, depending on whether the community is "participating" in the NFIP. If the community is not participating, then individuals cannot purchase NFIP and no federal monies can be provided for permanent repair or reconstruction in Special Flood Hazard Areas (SFHA). Flood insurance must be purchased for properties located in a SFHA as a condition of federally-backed mortgage loans. If a property in an SFHA in a "participating community" is not insured, the disaster victim can still get federal help (a "first bite at the
apple"), but it may not be enough to rebuild since special rules require properties that are more than "50% damaged" to be rebuilt to certain local flood plain requirements and elevated.1 Moreover, anyone who is uninsured and receives federal disaster assistance after a flood will be required to maintain flood insurance to remain eligible for future federal disaster assistance from IFGP and SBA (see Sections 8 and 9). The IFGP program pays for flood insurance premiums. (In the recent North Dakota floods, IFGP grants were reduced by $200 off the top, and paid directly for group flood insurance premiums for 3 years.)

2. Business Insurance

Many victims of disasters are business owners who may also seek federal disaster assistance. Like most homeowner policies, business policies are unlikely to provide standard coverage for earthquakes and floods without additional riders. However, most policies will contain **business interruption coverage** and **inventory protection coverage** which may allow a business to recover some of its losses. Federal flood insurance is available to businesses for building and contents coverage.

3. Vehicle Insurance

Most vehicle insurance contains two major types of coverage, "liability" (for damages caused to third parties) and "comprehensive" (for property damage to the insured's vehicle) coverage. While some policies restrict or eliminate coverage for earthquake damage, individuals who have purchased "comprehensive" insurance coverage should be covered for physical damage to their vehicle caused by the disaster.

4. Condominium and Renter Insurance

Owners of condominiums and renters often have the most complicated problems with insurance claims following a disaster. This is because there are often two different sources of coverage for disaster losses. Condominium owners should carefully review, and maintain a copy of, their condominium association's insurance policy to ensure that when combined with their personal insurance policy there are no gaps in coverage. Again, earthquake and flood coverage usually requires the purchase of additional coverage not included in standard policies. Federal flood insurance is available to condominium owners for building and contents coverage.

Renters should maintain personal possessions coverage, but most do not do so. If the renter does maintain such coverage, the situation is almost identical in nature to that described above for condominium owners. However, if no coverage was in place it is unlikely that the renter will be able to recover through the landlord's policy. Personal property damage of lessees is specifically excluded from most earthquake policies. Renters can purchase federal flood insurance contents coverage.

**Despite this fact, all victims should be urged to file a claim with all possible sources of benefits.**

D. Parts of a Standard Policy

As mentioned above, the rights and responsibilities of the insurer and insured are described in the insurance contract or "policy". It is very important that the victim have a copy of the full policy. Most policies contain a declaration page, a detailed policy description and endorsements.

1. Declaration Page

Usually the first page of a policy, this page will briefly summarize the coverage contained in the policy. Many victims may only have this section of their insurance contract and should be directed to obtain the additional sections.
2. **Policy Description**

This is typically referred to as the body of the insurance policy and contains all of the contractual language which regulates the relationship between the insurer and insured. *It is in this section that conditions, limitations and exclusions regarding coverage will be described.* As is the case with many complicated contracts, these descriptions may be confusing and may contain a large number of "defined" terms.

3. **Endorsement**

Usually located at the end of a policy, endorsements may add, modify or delete coverage noted in the standard policy. It is very important to review the endorsements since earthquake or flood coverage is usually contained here and not in the policy description.

E. **Making a Coverage Claim**

1. **Claims Procedures Following Disaster**

All insurance companies have different claims procedures to obtain benefits. These procedures will often be contained in the policy description section of the insurance contract, but almost always begin with contacting the insurance carrier. After major disasters, many carriers will establish special phone hotlines for their policy holders. In addition, the Department of Insurance (1-800-927-4357) may be able to help you locate a particular insurer.

*Regardless of what a victim has been told by his/her insurance agent, urge him/her to make a claim. It is impossible to dispute a denial of benefits unless a claim is made.*

2. **First Party Claims**

Also, note that there may be different procedures for filing a *first party claim*, in which the insured seeks benefits for damage suffered by the insured, and a *third party claim*, in which a third party seeks to gain benefits through another party's coverage.

3. **Third Party Claims**

Third party claims are often very complicated and result in disputes and litigation far more often than first party claims. Victims should be advised to consult with an experienced insurance attorney.

4. **Inspection**

After a claim is filed, the first step toward payment of proceeds is usually a visit from a claims adjuster to the location of the damage. This adjuster then makes an initial determination regarding the amount of benefits the insurance company will pay on the claim.

II. **INSURANCE PROBLEM AREAS**

A. **Bad Faith, Misrepresentation and Denial of Claims**

The State of California has many laws regulating insurance contracts and the behavior of members of the insurance industry. If there are any questions regarding whether or not misrepresentations were made in the sale of an insurance contract, whether a denial of coverage was made using the proper procedures, or whether treatment from the insurance carrier was proper, both judicial and administrative remedies are available. Victims with these types of questions should consult with an experienced insurance attorney.
B. Offshore Insurance Carriers

Due to the high cost and difficulty of obtaining quality insurance in California, many people purchase their insurance from "offshore" insurance carriers. These companies sell insurance to California citizens through area brokers, but are not headquartered or located in California. They are often headquartered in foreign countries or the Caribbean, and they are not regulated by the California Department of Insurance. While some offshore carriers are reputable companies and pay their claims, many are little more than shams designed to victimize poor and hard-to-insure residents. If a disaster victim appears to be covered by such a carrier, urge them to contact the Department of Insurance to check on the status of the company.

C. Seek Additional Legal Advice if Necessary

The amount a person is able to recover from their insurance, as well as the amount available from FEMA programs, may depend upon the proper execution of the requirements contained in his/her insurance contract. Accurate interpretation of coverage and claims responsibilities will often be beyond the scope of services that a volunteer attorney can provide. Often, victims seeking legal assistance will not even have a full copy of their insurance contract for review. Therefore, it is exceptionally important to urge victims to seek detailed legal assistance from a qualified insurance attorney or legal services agency if they have not received a satisfactory settlement of their insurance claim. If the victim does not have a personal attorney, suggest the use of a State Bar-certified lawyer referral service. Call the State Bar Office of Bar Relations for a list of certified lawyer referral services (415-561-8250). Many such services waive processing fees for disaster victims following federal disaster declarations. If the victim is indigent, provide suggestions on local legal service agencies who might be able to help. Call the State Bar Office of Legal Services for information about local legal services programs (415-561-8800).

D. Refer to Insurance Specialist

Although true in all areas of inquiry, great care should be taken to properly advise each victim of the scope of assistance that you are providing. Since insurance claims may involve tens, if not hundreds of thousands of dollars, victims should be given possible sources of additional assistance and provided common sense guidelines to increase the likelihood of submitting a successful claim.

III. INSURANCE CLAIMS CHECKLIST

A. Contact the Agent, Broker or Insurance Company

Start the claims process. Do this even if there is uncertainty as to the extent of coverage or level of deductible. Also, insist on filing a claim regardless of whether or not the agent believes coverage is available.

B. Provide a Means to Contact the Agent

Make sure the agent knows where to reach you, especially if your home or apartment has been destroyed. If you are staying in a shelter, offer to contact the agent regularly until you have a contact number.

C. Document All Damage/Confirm All Conversations with a Letter

As soon as possible, take pictures or videotape all of your damage. Keep a detailed written inventory of all losses. Do not clean up or dispose of items until they have been photographed and inventoried.

If your initial claim is made by phone, confirm the conversation in writing and provide a list of your losses. Always note on your correspondence with the agent that the losses you list are only a partial list of your losses and that you will forward additional claims of losses when discovered.
D. Protect Property from Additional Loss

E. Obtain Estimates for Repairs/Keep All Receipts

Get estimates for the repairs you will need to make. Retain receipts for all repairs and additional costs incurred because of the disaster damage. These receipts should include those for costs incurred for additional living expenses.

F. Conduct Adjuster Inspection Before Repairs are Made

G. Get an Advance

If you are unable to maintain housing, consider asking your insurance carrier for an advance on your insurance proceeds.

H. Do Not Sign a Release

Do not sign a release, waiver, or cash a proceeds check without consulting with a lawyer.

I. Contact Insurance Company if Claim is Denied

If your claim is denied in part or in full request that the insurance company provide the reasons for their actions in writing.

If their reasoning does not seem consistent with the language of the insurance contract, or if you are unable to understand their reasoning, contact an attorney specializing in insurance cases for assistance.

For information and assistance regarding insurance carriers, contact the California Department of Insurance at 1-800-927-4357.

Endnotes

1. FEMA can also authorize additional NFIP coverage to help with the extra cost of rebuilding such damaged structures. For example, in North Dakota, FEMA authorized an additional $15,000 in coverage for policies purchased or renewed after June 1, 1997 to help pay for elevating, flood proofing, demolishing or relocating a substantially damaged structure (if required by local flood-plain management).
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MISCELLANEOUS

OVERVIEW

The following topics may arise during the course of assisting disaster victims; however, a more in-depth discussion of each is beyond the scope of this manual. A brief summary is provided for each topic. For legal assistance beyond brief advice, disaster victims should be referred to a State Bar-certified lawyer referral service.

I. ALTERNATIVE DISPUTE RESOLUTION

There are many types of disputes that may be settled without going to court, such as consumer, employment, housing, neighborhood conflicts and small claims matters. If a disaster victim is settling problems out of court, a referral to an alternative dispute resolution (ADR) program may be appropriate. Using ADR instead of litigation may result in a more expedient, cost-effective and satisfactory outcome. Mediation is one specific ADR process where a neutral facilitator assists the parties in resolving their dispute. Please note that ADR programs may be nonprofit or for-profit entities. Also, some programs may use attorney mediators, non-attorney mediators or both. For more information about alternative dispute resolution, refer to the State Bar pamphlet, "Should I Try To Settle My Problem Out Of Court." To order the State Bar pamphlet, call 415-561-8867. For a list of ADR programs in your community, refer to the Yellow Pages of the phonebook under "mediation" or "arbitration", or contact the local county bar association or the State Bar of California Office of Legal Services at 415-561-8800.

II. COMMERCIAL LANDLORD/TENANT

It is crucial that a copy of the lease be reviewed carefully for terms and conditions dealing with issues including loss of property use due to damage or destruction, rent abatement, limitation of liability, repairs, insurance and evictions. Parties to commercial leases, unlike residential leases, can waive or modify statutory rights and obligations.

A. Lease Provisions

1. The Duty To Repair

Commercial and office leases typically require the landlord to make structural repairs (such as repairs to foundations, roofs, exterior walls, interior load-bearing walls, parking lots, walkways, etc.). In turn, the tenant is usually required to make interior repairs (e.g., plumbing, electricity, heating, ventilation, air conditioning systems, etc.). In some cases, however, the tenant may be required to make all repairs.

2. Lease Provisions Limiting Landlord's Duty To Repair

The lease may include limitations on the landlord's duty to repair, such as conditioning the landlord's duty to repair on whether or not there is insurance. For instance, if the landlord is responsible for repairing the damage and the premises are only partially destroyed, the landlord may be required to repair the premises only if the damage is insured. If partial damage is uninsured, or if the premises are entirely destroyed, the landlord may have the option to either repair the damage or terminate the lease. Additionally, the lease may give the landlord the option to terminate it, regardless of insurance coverage, if the tenant is near the end of the lease term (within approximately six months).

3. Tenants' Rights

The lease may contain a provision for abatement of rent. In other words, if the landlord is required to repair damage, the tenant's rent may be reduced in proportion to the extent of damage while the landlord makes repairs. Additionally, many leases give the tenant the right to terminate the lease if the landlord fails to undertake repairs within a specified time limit. In the event that the lease requires the tenant to repair the damage, the tenant may be required to repair only insured, partial damage.
B. Notes Regarding Emergency Legislation and Self-Employed Workers

It is important to obtain any local emergency orders or State legislation affecting residential and commercial landlord/tenant relationships. Self-employed commercial tenants should also be advised about Disaster Unemployment Assistance (See Section 10), Mortgage and Rental Assistance (See Section 7) and SBA disaster loans (See Section 9).

III. DEATH AND PROBATE

In the unfortunate event of death, family members may not know that there is assistance available to the survivors:

A. Funeral expenses for deaths directly caused by the disaster (See Section 8);
B. Disaster Unemployment Assistance (See Section 10); and
C. Death and survivor benefits from the Social Security Administration.

Additionally, insurance policies need to be reviewed for coverage. Family members may have questions about probating the decedent's estate as well as their own estate planning needs (e.g., living trusts, wills, durable powers of attorney for property and health care, conservatorships and guardianships). Please refer to the State Bar pamphlets "Do I Need a Will" and "Do I Need Estate Planning" for general information. To order pamphlets, call the State Bar at 415-561-8867.

IV. NONPROFIT ORGANIZATIONS

A careful review of the organization's insurance policy and lease is in order. Eligible nonprofits may qualify for disaster housing assistance from FEMA, for disaster loans from SBA and federal tax deductions for disaster losses. An attorney experienced in nonprofit corporation law may be consulted. See Sections 5, 13F and Commercial Landlord/Tenant above (in this Miscellaneous Section, Paragraph II).

V. REAL PROPERTY (MORTGAGE PAYMENTS)

The damage or destruction of residential or business real property raises a number of issues such as tax consequences, insurance, repair and reconstruction, mortgage payments and foreclosure. See Sections 5, 9, 13A and 13F.

Mortgage payments are still due even if a home is destroyed. The lender should be notified immediately of the situation. The lender will have information on insurance coverage which may apply. If the policy does include coverage for the damage caused by the disaster, the homeowner must decide if the insurance money should be used to pay off the mortgage or to repair or rebuild the home.

Depending on the extent of property damage, the homeowner's ability to make mortgage payments and the lender's position, consider the following:

A. Delay mortgage payments for a specific or indefinite time (with or without interest);
B. Reduce monthly mortgage payments for a specific or indefinite time (with or without interest);
C. Refinance the loan;
D. Sell the property;
E. Abandon the property to the lender (possibility of deficiency claim and negative credit report);
F. Foreclose judicially or non-judicially (possibility of deficiency claim and negative credit report); or
G. Other options offered by the lender.

For more information, please refer to Disaster Legal Assistance Manual, Los Angeles County Bar Association, Barristers Disaster Relief Assistance Committee, January 1994, 185 pp.
VI. SMALL CLAIMS COURT

A disaster victim may want to take a dispute to small claims court if the dispute involves $5,000 or less, such as recovering a security deposit from the landlord. See Section 13D. Please refer to the State Bar pamphlet "How Do I Use the Small Claims Court" and instruct the client to go to Small Claims Court to obtain written information on how to handle a small claims case. To order the State Bar pamphlet, call 415-561-8867. For more information about Small Claims Court, contact the court or the small claims advisor in your county (See County government listings in the White Pages of the phonebook).

VII. TAXES

A. Property Taxes

California law provides for a reassessment of property taxes when damage to the victim's property caused by a natural disaster reaches a certain statutorily determined dollar amount. A request for reassessment must usually be filed within six months of a disaster and the application for reassessment must be completed and returned within 30 days. Contact the county assessor for instructions about filing such a request. (See County government listings in the White Pages of the phonebook.)

B. State Taxes

For general information about filing state tax returns for the year in which the disaster occurred, including extensions for filing and deductions for loss of real/personal property, call the Franchise Tax Board at 1-800-852-5711.

C. Federal Taxes

Federal tax laws provide that a victim may be able to declare a casualty loss on his/her federal income tax return for damage to real or personal property. For general information about filing federal tax returns for the year in which the disaster occurred, including extensions for filing and deductions for loss of real or personal property, contact the Internal Revenue Service at 1-800-829-1040. IRS Publication 547, "Nonbusiness Disasters, Casualties and Thefts," and Publication 584, a workbook showing ways to calculate amounts of loss, may be helpful. Order them free from the IRS by calling 1-800-829-3676. Questions regarding income and property tax consequences should be referred to a tax specialist.