Earth(quake), Wind, and Fire – How Attorneys Can Help Disaster Survivors

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Why Do Survivors Need an Attorney?

- Disaster survivors need food, water, shelter—and an attorney ([article](#))
- Disasters create/worsen legal issues
  - E.g., landlord/tenant, public benefits, consumer fraud, insurance, and property
- Disasters impact marginalized and vulnerable communities more than the general public
  - E.g., Elderly, disabled, LEP, non-citizens, DV survivors
Disaster Legal Services

- ABA’s touchstone public service program
  - Operates through an MOA with FEMA and ABA YLD
- YLD serves as exclusive coordinator of legal services for survivors
  - Coordination between numerous legal and non-legal agencies

Legal Authority

- Robert T. Stafford Act
  - 42 U.S.C. § 5174
- Regulations
  - 44 C.F.R. §§ 206.110 – 206.120
- FEMA’s IHPUG
  - See BOX link
- Disaster Operations Legal Reference 3.0
  - See BOX link
DLS Eligibility

• Provides FREE legal assistance “low-income” persons affected by a presidentially declared major disaster
• Volunteers assist with a wide range of legal issues
• Needs are both immediate and long-term

When Are Attorneys Needed?

• Immediate (0-30 days) “Shelter”
  – Provide information
  – Assist with FEMA applications
• Short term (1-3 months) “DRC”
  – Most legal claims begin to arise
• Long term (+3 months) “Clinical”
  – FEMA Appeals
  – Title clearing
  – Other complex legal claims
Meeting the immediate need: Lone Star Attorney Nancy Chavez & YLD Volunteer Akilah Craig at the GRB Convention Center field legal questions from Harvey survivors.

**Incident**

↓↓↓
Request from Local Government (EM or DR)

↓↓↓
Regional Administrator requests to FEMA HQ

↓↓↓
FEMA HQ forwards to DHS

↓↓↓
DHS forwards to White House

↓↓↓
POTUS makes decision
Major Disaster Declaration

Public Assistance  Individual Assistance  Hazard Mitigation

Transitional Sheltering Assistance (TSA)
Disaster Legal Services (DLS)
Small Business Administration Loans
Individuals & Households Program (IHP)

Other Needs Assistance (ONA)
Housing Assistance (HA)

Incident Period: November 30, 2018
Major Disaster Declaration declared on January 31, 2019

Individual Assistance Applications
Approved: 2,165
Total Individual & Households Program
Dollars Approved: $6,191,391.55

Designated Counties (Individual Assistance):
Anchorage (Borough), Kenai Peninsula (Borough), Matanuska-Susitna (Borough)
FEMA’s Role in Disasters

Mission:
Helping people before, during, and after disasters.

The Individual’s Role in Disasters

• I don’t need to prepare, that’s the government’s job
• FEMA will make me whole
• What do you mean I need to apply for a loan?
The ABA/YLD Role in Disasters

• First 48 hours of LOI
  – Create toll-free hotline for survivors
  – Publicize hotline and relief via a Press Release

• Expand capacity of pro bono
  – Recruit, train, and mentor pro volunteers
  – Respond to the crisis du jour

• Be a connector for the community
  – Eliminate duplication
  – Create efficiencies

FREE LEGAL ASSISTANCE AVAILABLE FOR ALASKA EARTHQUAKE SURVIVORS

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ALASKA, February 25, 2019 — A legal hotline is now available for people impacted by the November 30, 2018 Earthquake in the following areas: Municipality of Anchorage, Kenai Peninsula Borough, and Matanuska-Susitna Borough (additional areas may be designated later). Earthquake survivors facing legal issues who are unable to afford a lawyer may call the toll free hotline: (855) 743-1001 9:00 am - 5:00 pm (Monday-Friday)

Callers are to leave a message where they will receive a call back within 24 to 48 hours. Survivors can also get assistance by visiting a FEMA Disaster Recovery Center (DRC). Text “DRC” and a zip code to 48352 (4FEMA) to locate a Disaster Recovery Center in your area (standard message and data rates apply). Survivors can also visit: https://www.fema.gov/disaster-recovery-centers
Individual Assistance Programs

- Mass Care & Emergency Assistance
- Crisis Counseling & Training
- Disaster Unemployment Assistance
- Disaster Case Management
- Individuals and Household Program
  - Housing Assistance (HA)
  - Other Needs Assistance (ONA)
- Small Business Administration Disaster Loans

FEMA Eligibility

- Citizenship
  - At least one member of the household must be U.S. citizen or non-citizen national
- Proximity
  - Primary residence located in the defined area (county) and affected by the disaster;
- Proximate Cause
  - Loss is directly caused by the disaster;
- Remedy
  - Loss cannot be rectified by other means, and it is a loss that FEMA can rectify.
Barriers to Getting Assistance

**Lack of Knowledge**
- Is Assistance available?
- Where do I look?
- Is there a legal issue or solution?
- How does the system or process work?

**Practical Factors**
- Lack of resources
- Restrictive funding
- Transportation
- Lack of Time
- Distrust
- Costs

Applying for Assistance

- Register within 60 days from the declaration (absent extensions)
  - **In Person** = at the Disaster Recovery Center
  - **Online** = [www.disasterassistance.gov](http://www.disasterassistance.gov)
  - **Phone** = 1-800-621-FEMA (3362)

- Important to file on time, but late applications may be accepted on case-by-case basis up to 120 days after declaration
Once you Apply for Assistance

• Submit necessary paperwork requested by FEMA

• Complete Home Inspection
  – Applicant **MUST** be present or designate someone in writing with FEMA prior to inspection

About Inspections/Inspectors

• Inspectors don’t decide eligibility, but they are FEMA’s fact finders

• Most initial decisions are automated. Computer formulas utilize the information from inspectors to decide eligibility

• Work with the inspectors and advocate directly with those individuals which may eliminate the need to appeal
About Inspections/Inspectors

• Not FEMA employees
• Only requirement is criminal background check
• Inspectors receive 8 hours of training
• Can’t use a ladder to view roof
• Don’t go underneath a house
• Have been given bonuses to hit quotas in the past

Decision Time

• Approval
  – FEMA will automatically transfer funds to your bank account
  – Written benefits explanation letter mailed to applicant (not POA)
  – Registrant can still appeal
• Denial
  – Written letter stating basis for denial
  – Deadline to appeal is 60 days from the notice of denial.
No News (It Isn’t Good News)

- Could be waiting on inspection
- More likely
  - Registrant does not get notification or cannot access electronic notices
  - Mailing address is incorrect
  - Other application information needs to be corrected (best to do in writing)

Common Denial Reasons

- Home is safe to occupy
  - Occupant is “not willing to leave” so it must be “safe to occupy”
  - Does applicant understand relocation is temporary until repairs are completed?
- Insufficient damage
  - Lots of room for advocacy
- Damages to home not cause by disaster
Common Denial Reasons

• Voluntarily Withdrawn / Lack of Cooperation
  – Get to the bottom of why. Was the applicant able to meet with an inspector?

• Ineligible
  – Renters applying for repair – only get personal property or rental assistance
  – Landlords applying for repair – FEMA assistance only available for primary residences.

Denial Reason - Proof of Ownership

• Lacks proof of ownership
  – Can by tricky if there are title issues

• Owner-occupant standard includes:
  – Legal owner;
  – Life Tenant; or
  – Person who lives in residence rent-free, responsible for property taxes or (major) maintenance
  – Standard must be met at time of disaster
Denial Reason - Personal Property

• Denied relief due to lack of need or amount awarded too low
  – Applicant must prepare list of what essential items were damaged or lost- an appeal exhibit
• Was, and is, property available for inspector to verify losses?
• Get estimate, especially for essential appliances

Denial Reason - Transportation Assistance

• Not essential vehicle(s)
• Not legal to drive on date of disaster (liability ins., registered)
• Repairs are cosmetic rather than safety hazard or necessary to make car functional
• If car totaled because of disaster – can receive award over $7K to replace
Denial Reasons - Insurance Coverage

• Application may indicate that the registrant has homeowners insurance
• Typically no inspection is done and a denial is issued
  – Same for auto or medical insurance
• These cases may warrant a closer look
  – Applicant may potentially may have a FEMA eligible loss
  – Applicant must appeal to show what coverage he or she has (or does not have)

Denial Reasons – Declined SBA Loan

• Typically would be bad to apply for a loan you can’t afford, but necessary in FEMA/SBA context
• Applicant is not required to take a loan if offered one
  – But must understand potential consequences
  – May be denied other benefits if denied SBA loan
  – Lower income applicants typically lack credit to obtain SBA loan
Appeal

• Exercise your right to an appeal
  – Don’t give up
  – The system is complicated, bureaucratic, and sometimes inefficient

• Do your homework before the appeal
  – Send a complete appeal the first time
  – Verify you have FEMA auth/release on file
  – Obtain the admin file from FEMA
  – Call FEMA (denial letters may be generic, so be sure to investigate)

Appeal

• Every appeal must be in writing and include:
  – Individual’s full name
  – FEMA registration number
  – Disaster Number (e.g., DR-4413)
  – Pre-disaster address & current address
  – Phone number
  – Last 4 digits of SS #

• Contents
  – Clear and complete basis for the appeal
  – Supporting documentation
  – Signature under penalty of perjury
After the Appeal

• FEMA will review the appeal and either
  – Reverse its denial
  – Sustain its denial
  – Ask for more information

• If asking for more info, FEMA may:
  – Letter asking for more info within 30 days
  – Contact a third party to verify information
  – Schedule an inspection

• FEMA must respond in writing w/in 90d

Case Studies
Initial Decision

$0

Insufficient Damage / Home is Safe to Occupy
Case Studies: Maria
FEMA Appeal

- Appealed CL’s Rental Assistance Denial and amount of Home Repair Assistance and Personal Property Assistance.
- Decision: Over $5,000 in rental assistance to use in Florida and additional HRA funds to repair home in Puerto Rico.
  - Note: no additional funds were given for PPA as she had already received $1,000 and FEMA found she was not entitled to any additional funds for essentials

Case Studies: Irma
FEMA Appeals

• Appealed FEMAs initial HRA denial
  – Awarded:
    • $2,090 in rental assistance
    • $1,000 in Home Repair Assistance

• Second Appeal
  – Awarded: $4,625.00 in Home Repair Assistance
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BONUS: Tips & Tricks
Advocating for Disaster Survivors

• Be aware of deadlines
  – Disaster unemployment deadlines = short
  – Application/Appeals generally longer (60d)

• Get contemporaneous documentation
  – Written: home inspections: document who you spoke with, their contact information, how long the inspection took, questions they asked, statements made, etc.
  – Photographic: Especially helpful for damaged/destroyed items that are thrown out

Advocating for Disaster Survivors

• Understand FEMA’s role in disasters
  – Lends support to the local government
  – Helps with recovery, not making you whole

• It is a bureaucratic system
  – Don’t give up, empower survivors to keep going
  – A legal pep talk can help survivors who may be overwhelmed or too depressed to help themselves
  – Getting nowhere? Hang up and call back

• Financial assistance may flow slowly
• Survivors don’t appreciate legal issues
When Calling FEMA

• FEMA Helpline: 1-800-621-3362
  – Some automated information available
  – Have authorization form and last 4 of SSN
• You do not speak to decision maker
  – You speak to whatever employee answers
• The helpline staff review notes from file in order to address your questions
  – Tier 1 vs. Tier 2 workers

Misuse of Grant Funds

• Money may ONLY be used for intended purpose
• Keep receipts and bills to document use for 3 years*
• FEMA can audit, seek to recoup if it is misused.
• Tax free, exempt from garnishment, etc.
• Benefits do not count against other types of federally-funded (means-tested) aid
What to do Next...

• Review our self help materials on our Box Folder which redacted appeals and:
  – IHP Unified Policy Guidance
  – Disaster Operations Legal Reference
  – Non Stafford Recovery

• External self help materials
  – Refer to the National Disaster Legal Aid website and Appeals section.
  – Review the DisasterAssistance.gov FAQs
  – Review FEMA’s Help After a Disaster Flyer

Questions?