

# **PRO BONO LEGAL SERVICES**

## **I (A)**

### **Introduction**

Disasters usually are unexpected and the damage begins to occur instantaneously. The time to prepare an effective volunteer *pro bono* legal assistance program is before any disaster occurs. This manual provides the information necessary to launch a volunteer legal program in the event of a disaster.

The Allegheny County Bar Association's Public Service Committee formed a Disaster Plan subcommittee, which was charged with the duty to develop a disaster manual for volunteer attorneys. The subcommittee reviewed other bar association disaster manuals, and in particular, the Louisiana State Bar Association's Emergency Disaster Training Manual and the Texas State Bar and Houston Bar Associations' Resource Materials, which were used as a prototype for this manual.

### **Acknowledgement**

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The following sections and committees provided the necessary expertise in the covered topics to create an accurate manual which can be used by volunteer attorneys at the time of a disaster.

Allegheny County Association of Municipal and School Solicitors Board of Trustees  
Bankruptcy and Commercial Law Section Council  
Business Law Section Council  
Construction Law Section Council  
District Justices Committee  
Elder Law Committee  
Federal Court Section Council  
Finance Committee  
Health Law Section Council  
Labor and Employment Law Section Council  
Lawyer Realtor Committee  
Managing Partners Committee  
Professional Ethics Committee  
Public Service Committee  
Publications Committee  
Real Property Section Council  
Women in the Law Division Council  
Workers' Compensation Section Council

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David Blaner  
Executive Director  
Allegheny County Bar Association  
*June 2006*

# PRO BONO LEGAL SERVICES

## I (B)

### *Message to Volunteers*

Dear Fellow Volunteer:

Thank you for volunteering your time to help victims in their time of need. Your willingness to give your time and talents to the many people who may be displaced and damaged by a declared disaster is greatly appreciated.

The purpose of this manual is to provide you with an introduction to the legal assistance program established by the Allegheny County Bar Association and to acquaint you with some of the information you may need. Included in this manual is an overview of FEMA and non-FEMA legal assistance, a description of the process of providing legal assistance to disaster victims, information you may need to help answer frequently asked questions on issues such as housing, insurance, unemployment compensation and other relevant issues, as well as an appendix including: FEMA Disaster Assistance Process, Case Intake and Closure Forms, copies of relevant code articles and statutes, important telephone numbers, and legal services contact numbers.

We have also included an interview checklist to help you identify problems and legal issues faced by the individuals and families affected and information to help you make sure the information you collect and the assistance you provide can “follow” those that you help throughout the course of the recovery ahead.

#### **Legal Assistance Provided**

In the event of a declared disaster, the Allegheny County Bar Association will establish a toll free number for victims who need access to pro bono legal assistance. This document will be updated with that number when a disaster is declared and the number becomes available. Until a toll free number is established, victims can reach the Allegheny County Bar Foundation’s Pro Bono Center at [www.acbf.org](http://www.acbf.org) or call 412-402-6677 for assistance. If Allegheny County establishes an engagement center to provide a variety of on-site services to disaster victims, the bar association also may be providing triage type services at the center.

The legal assistance provided to those in need comes from three main sources:

- 1) **The Federal Emergency Management Agency (FEMA)** has a contract with the ABA Young Lawyers division by which the ABA/YLD mobilizes young lawyers in a state where a federal disaster is declared to provide free legal services to those disaster victims who are eligible for

FEMA benefits. The ABA/YLD [Disaster Legal Services Program](#) acts in coordination with the Pennsylvania State Bar Association, its Young Lawyer's Division, along with local and national legal service providers to provide legal services to those disaster victims entitled to FEMA assistance or in need of public assistance benefits;

2) **The Allegheny County Bar Association (ACBA)** will also provide additional legal assistance through volunteer lawyers to disaster victims through the Pro Bono Center. Contact 412-402-6677 or 412-261-5555 or [www.acbf.org](http://www.acbf.org). In the event that the ACBA is not able to function due to the disaster, contact should be made to the Pennsylvania State Bar Association, Pro Bono Coordinator David Trevaskis at 1-800-932-0311 ext. 2236 or email: [david.trevaskis@pabar.org](mailto:david.trevaskis@pabar.org).

3) **Neighborhood Legal Services Association (NLSA)**, the local legal services program for Allegheny County will continue to provide free civil legal services to existing and new clients who would qualify for help as a result of the disaster. Visit them at [www.nlsa.us](http://www.nlsa.us).

All legal assistance telephone numbers will be posted on the ACBA website ([www.acba.org](http://www.acba.org)) and will be publicized throughout any declared disaster and evacuation areas on television, radio, and in the newspaper so that persons in need can obtain access to legal services.

### **Time Commitment**

A common question asked by volunteers relates to the time commitment involved. First, by volunteering to provide legal services for victims, you are agreeing to provide your legal services on a pro bono basis. In many cases, the time required may be minimal, simply answering a few questions or writing a few letters on the victim's behalf in a single day. In other cases, additional time may be required but your service is not meant to be everlasting. Rather, the pro bono program we have set up is designed to help provide emergency legal assistance to victims and help identify any ongoing or more complex disaster-related legal assistance needs that may require further assistance or referral to another organization. If you find a victim who needs more extended representation you can elect to continue to represent them or refer them to the appropriate legal services program ([www.PALawHELP.org](http://www.PALawHELP.org)).

### **Limitations to Representation**

There are several important limitations to your representation:

**1) Disaster-related only.** This program is to help persons damaged by a declared disaster, thus problems unrelated to the disaster are not covered;

**2) Non-fee generating cases only.** Assistance in any declared disaster does not cover fee-generating cases. If the victim has a case that is potentially fee-generating, he or she should be referred to the Allegheny County Bar Association's Lawyer Referral Service program ([www.acba.org](http://www.acba.org); 412-261-5555) or the Pennsylvania Bar's Attorney Referral Service ([www.pabar.org](http://www.pabar.org));

**3) Conflicts of Interest.** If you have a conflict of interest with a client referred to you, please notify the referring bar association that you cannot take the case. Remember you are acting as an attorney for any declared disaster victim whose case you accept, please review your representation for potential conflicts;

**4) Within legal expertise.** If, after speaking to a victim, you believe that the case is beyond your expertise, you should contact the bar association and ask that the case be assigned to another volunteer;

**5) Anti-solicitation rule.** Lawyers are strongly cautioned against engaging in solicitation of disaster victims. Solicitation, whether by in-person contact, telephone, or real-time electronic communications, and whether by the lawyer personally or someone on his or her behalf, is prohibited by Rule 7.3(a) of the Pennsylvania Rules of Professional Conduct unless the lawyer has a familial or prior professional relationship with the prospective client. Although direct mail solicitations are permitted, they too must comply with Rule 7.3(b) of the Pennsylvania Rules of Conduct. Anyone with information that a lawyer is engaging in solicitation should report the lawyer to the Disciplinary Board of the Supreme Court of Pennsylvania. Please note that volunteer lawyers who are offering their services to disaster victims at no charge do not violate the anti-solicitation rule.

### **Quick Summary of What You Should Do**

**1) Read through the attached materials** which discuss the role of the volunteer lawyer. This is especially important because it lists common questions that arise in a disaster and details the steps to be followed in assessing the disaster victim's needs, legal assistance requirements, and in documenting your assistance and follow-up for the client (Disaster Legal Assistance Interview Checklist and Intake Forms).

**2) Referral procedures.** The victim's initial call into the toll free assistance number will be answered by an intake person who will first determine if the issue is one that should be handled by one of the attorney volunteers. The caller will be asked to provide a telephone number at which he or she can be reached within the next 24 to 48 hours. The intake forms will then be e-mailed or faxed to an appropriate volunteer lawyer who will then contact the victim. In the event the disaster victim has no number where he or she can be reached, the victim will be given the name and number of a volunteer lawyer who will be contacted directly by the victim. Do not be surprised if you do not receive a case for several weeks. During the initial days after a disaster, many of the victims have not yet

focused on their legal needs because they are more worried about basic needs such as food, shelter, and health. It often takes time for victims to realize that they may need a lawyer. Volunteer attorneys can help clients navigate through the bureaucratic maze to get the help they need.

**3) Respond to victims right away.** Once you receive a case, please respond to the victim within one business day. If you cannot return the call within that time, please contact the Bar Association hotline immediately so that the call can be reassigned. Also, if you plan to be out of town, please alert your staff so that they can contact the hotline to reassign any calls you will be unable to answer.

**4) Handling the victim's legal problems.** You should document the client's responses to the Disaster Legal Assistance Interview checklist and Intake forms, all of your contacts and actions taken on behalf of the client, and the outcome of your advocacy efforts. Please keep track of the amount of time spent on each case and notify the hotline when you are done providing services by e-mailing the attached Case Closure Form to Allegheny County Bar Association ([www.acba.org](http://www.acba.org)) or faxing the form to 412-261-3622.

Many of the victims of a disaster cannot afford other legal representation so you are their lawyer and the person who will guide them through a difficult time. Additionally, many victims have suffered and will continue to suffer great personal trauma, so every effort should be made to be sensitive to their feelings and behavior, and every effort should be made to be responsive to their needs. Our thanks go out to each and every person who volunteers to assist a disaster victim. You can provide the help so desperately needed in a time of crisis.

Sincerely,

Robert V. Racunas  
Past-President, Allegheny County Bar Association

# **PRO BONO LEGAL SERVICES I (C)**

## **The Role of the Volunteer Lawyer**

### **Types of Volunteer Program**

The role of the volunteer lawyer may vary depending upon the type of volunteer program which is initiated. When evacuees were scheduled to arrive shortly after Hurricane Katrina hit the South, Allegheny County developed an Engagement Center which provided a number of critical on-site services. The services offered at the Center helped to meet the immediate needs of evacuees, such as food, clothing, transportation and housing. Examples of other services included FEMA registration, birth certificate documentation, and social security number verification, application for disaster unemployment compensation and welfare benefits through state and federal offices. The Allegheny County Bar Association (ACBA) also set up a booth to provide on-site legal assistance.

### **Engagement Center**

If circumstances permit such a center to be established, then the volunteer legal program will begin as two phases. Under this plan, the attorneys volunteering at the Engagement Center will conduct intake and assist as much as possible. In Phase II, families with unresolved legal issues will be matched with attorneys who have experience with the issues identified.

### **Toll-free number at the ACBA**

The toll-free number which will be set up by the ACBA for victims to call if they need legal assistance will be publicized by FEMA and by the ACBA through shelters, FEMA Disaster Recovery Centers, television, radio, and/or local newspapers.

### **Initial Intake Information You May Need to Help the Victims**

Obtain the following information from the victims:

1. full name,
2. names and ages of family members living with the victim at time of disaster,
3. present and disaster area addresses,
4. telephone number(s) where the victim may be contacted,

5. description of losses and disaster-related problems,
6. insurance information,
7. disability or chronic health care needs of victim and/or family members,
8. Citizenship status.

FEMA emergency disaster assistance (e.g., food and shelter, crisis counseling, non-cash assistance) is available to anyone affected by the disaster, regardless of immigration status.

U.S. citizens and qualified immigrants are additionally entitled to ongoing FEMA individual assistance benefits, including disaster relief Medicaid, mortgage and rental assistance, and other programs.

#### **ACBA Toll-free Number Process of Providing Legal Services to the Disaster Victims:**

- **Intake screening by ACBA and referral to volunteer attorney.** When a victim calls into the toll-free number, the staff at the ACBA will collect initial information from the victim on the Intake Form which is included in this manual. The staff will then immediately determine whether the case is one in which lawyer assistance is required, and if so, whether the matter should be forwarded to an ABA/YLD FEMA attorney or to one of the other attorneys volunteering to provide non-FEMA legal assistance. The staff will then immediately fax or email the Intake Form to the appropriate volunteer attorney.
- **Volunteer attorney review for fee potential, conflicts, and legal expertise.** When the volunteer attorney receives the Intake Form, the volunteer attorney should immediately determine whether the legal service requested is a fee-generating matter, and if so refer the victim to the Allegheny County Bar Association Lawyer Referral Service at 412-261-5555. Additionally, in the event the volunteer attorney determines the case is beyond the attorney's expertise, the volunteer attorney has a conflict of interest, or the volunteer attorney cannot handle the case for any other reason, the attorney should immediately call the ACBA hotline number and ask that the case be reassigned.
- **Volunteer attorney contacts victim, interviews, and handles case.** Once the volunteer attorney has made the decision to accept the matter, the volunteer attorney should call the victim within 24 hours of the time after the initial call was made by the victim to the ACBA for help. The



attorney should then help the victim with his or her legal needs, keeping careful notes regarding the intake, recommendations, and disposition of each case for the victim's benefit and the benefit of any lawyer who may subsequently be involved in the case, including completion of the Disaster Legal Assistance Interview checklist.

- **Volunteer attorney case closure.** After completion of the matter, please complete a Case Closure Form and email the completed form to [probono1@acba.org](mailto:probono1@acba.org) or fax to 412-261-3622. If the matter is still open ninety days after the assignment, a brief report on the anticipated closing date should be faxed or emailed in the same fashion. All volunteer attorneys should keep track of the amount of time spent on each case and should include this information in the Case Closure Form.

### **Type of Legal Services Rendered**

Based on past experiences with hurricanes and other natural disasters, volunteer attorneys are asked to provide advice on the following:

1. Assistance with filing for emergency assistance
2. Assistance with insurance claims (life, property, medical, etc.)
3. Counseling on lessor-lessee, homeowner, and other housing problems
4. Assistance with home repair contracts
5. Assistance with consumer protection matters, remedies, and procedures
6. Counseling on mortgage foreclosure problems
7. Replacement of important legal documents destroyed in the natural disaster, such as wills, green cards, and the like (see Appendix for information on how to obtain copies of lost documents)
8. Help with understanding, applying for and navigating the system for public benefits programs (e.g., food stamps, welfare, social security disability, Medicaid, etc.)
9. Drafting of powers of attorney
10. Estate administration (insolvent estates)
11. Tax questions

12. Preparation of guardianships and conservatorships
13. Referring individuals to local or state agencies which might be of further assistance (e.g. consumer affairs)
14. Assisting individuals with disabilities to obtain accessible housing, durable medical equipment (e.g., wheelchairs), prescriptions, medical care including mental health services, and accessible transportation
15. Helping children obtain special education service
16. Assistance in obtaining continued Social Security benefits
17. Assistance with applications to employers for covered family leave

This manual is a work in progress and will be updated as additional information becomes available. It includes a general introduction to some of the legal issues that volunteer attorneys are likely to be asked in an emergency situation. Obviously, the manual is intended only as a starting point for any legal research that volunteer attorneys may need to conduct to effectively assist their clients. Special thanks is given to the Louisiana State Bar Association and the Texas State and Houston Bar Associations, whose disaster manuals were used to assist Hurricane Katrina evacuees who made their way to Pennsylvania and as a prototype for this manual.

# **PRO BONO LEGAL SERVICES I (D)**

## **Hotline Tips**

Upon designation of a disaster, the Allegheny County Bar Association will set up a toll free telephone number for victims to obtain access to pro bono legal assistance.

The hotline number will be posted on the ACBA website ([www.acba.org](http://www.acba.org)) and will be publicized throughout the disaster and evacuation areas on television, radio, and internet. Currently, the Allegheny County Bar Foundation Pro Bono Center can be accessed at 412-402-6668 or [www.acbf.org](http://www.acbf.org)

In the event the ACBA is not able to function due to the disaster, contact should be made to the Pennsylvania State Bar Association, Pro Bono Coordinator David Trevaskis at 800-932-0311, ext. 2236 or [david.trevaskis@pabar.org](mailto:david.trevaskis@pabar.org).

# GENERAL INFORMATION

## II (A)

### Lost Documents<sup>1</sup>

The following information regarding lost documents may be helpful in dealing with emergency issues at the time of a natural or manmade disaster.

#### **Commonly Needed Documents**

1. Bank and investments accounts (checkbooks, savings, stocks, money markets)

Contact your local bank or the nearest branch for help getting copies of statements, etc. If you ask the bank to waive its usual fee they may do that for you.

2. Birth, death, and marriage certificates, divorce decrees

Birth certificates (Place of birth—all of Pennsylvania) can also be obtained by contacting the Division of Vital Records, Chamber of Commerce Building, 411 Seventh Avenue, Pittsburgh, PA, 15219, (412) 565-5113.

Death certificates (Place of death—Pittsburgh only) can also be obtained by contacting the Division of Vital Records, Chamber of Commerce Building, 411 Seventh Avenue, Pittsburgh, PA, 15219, (412) 565-5113. Death certificates (Place of death—all of Pennsylvania) can also be obtained by contacting the Division of Vital Records, 101 S. Mercer Street, PO Box 1528, New Castle, PA 16103, (724) 656-3100.

In Allegheny County, an individual may obtain a marriage record by either appearing in person at the Marriage Records Department or by mailing a letter of request to the department. The Marriage Records Department is located on the First Floor of the City-County Building, 414 Grant Street, Pittsburgh, Pennsylvania. For more information, please call (412) 350-4180.

3. Court documents (such as deeds)

Contact your attorney or visit the Allegheny County website (<http://www.county.allegheny.pa.us/>) to find more information specific to your needs.

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<sup>1</sup> ACBA Publications Committee

#### 4. Miscellaneous Documents

Information on driver's licenses may be obtained by calling 1-800-932-4600 or visiting [www.dmv.state.pa.us](http://www.dmv.state.pa.us).

United States Passports may be obtained through [www.travel.state.gov/passport](http://www.travel.state.gov/passport) or calling 1-877-487-2778 or 1-888-874-7793.

For a foreign passport contact your country's nearest consulate.

Food stamps, and Food Stamp Cards or EBT cards—See Chapter VIII.C. of this manual for more information.

Immigration documents—See Chapter V of this manual.

Insurance Documents—Contact your insurance company for help.

Medicare/Medicaid cards—See Chapter V of this manual for information on replacement cards.

Social Security cards—See Chapter V of this manual for information on replacement cards.

Credit cards—Contact the nearest bank or institution that issued your card.

Wills or other estate planning documents—If you can, contact your lawyer's office if you had a lawyer help you prepare these. You can find their office number through the Allegheny County Bar Association at 412-261-6161.

See the Appendix which outlines how to obtain replacement copies of lost governmental documents.

# GENERAL INFORMATION

## II (B)

### General Questions<sup>2</sup>

#### Frequently Asked Questions

1. **After the disaster the gas station up the street was charging \$3.00 a gallon for gas. Isn't that price gouging?**

If you find price gouging, contact the Pennsylvania Attorney General's office.

2. **When funds are provided for disaster assistance in other countries, does this affect the amount of money that is available for my state?**

No. If Federal disaster assistance is designated for your area, the disaster relief funds for your state will not be affected by any funds provided for international relief efforts.

3. **My vacation/secondary home was damaged. Can I get any help?**

Damages to a secondary or vacation home are not eligible under FEMA's disaster assistance program. However, if you own a secondary home that is rented out or occupied by a family member, you may be eligible for assistance from the Small Business Administration.

4. **Will FEMA help me pay my utility bills?**

No, FEMA cannot pay utility bills. However, local charitable organizations may be able to help for a short period. We suggest you contact the Red Cross or your local United Way office for a referral to a local agency that may be able to help.

5. **I lost my food because of the power outage; will I be reimbursed for it?**

FEMA's disaster assistance program does not cover food losses. Voluntary organizations in the disaster area may be able to help you with a hot meal or other immediate needs for food.

6. **I have trees down all over my yard, is there any help for debris removal?**

Many homeowners' insurance policies cover debris removal. FEMA does not typically pay for cleaning up debris on private property or in gated communities,

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<sup>2</sup> ACBA Professional Ethics Committee

but if the debris is keeping you or emergency workers from safely getting to your home, FEMA may be able to provide help. Your local officials can also tell you if there is a pickup schedule for debris in your area.

**7. I purchased a generator. Will I be reimbursed?**

FEMA reviews requests for reimbursement of the cost of a generator on a case-by-case basis and determines if a generator was purchased to overcome a disaster-related hardship, injury, or adverse condition. You should register and submit your receipts to see if the cost is covered.

**8. Does disaster help have to be repaid?**

A grant from the Individual and Households Program does not have to be repaid. Loans from the Small Business Administration must be repaid.

**9. FEMA told me to send in my receipts. What is the mailing address?**

Please mail all correspondences to the following address:

Mail: FEMA – Individual and Households Program  
National Processing Service Center  
P.O. Box 10055  
Hyattsville, MD 20782-7055

Or

Fax it to: 1-800-827-8112

Please write your name, social security number, disaster number and registration number on all pages of your document and keep a copy for your own records.

**10. I got a check from FEMA. What can I use the money for?**

FEMA sends you money to meet your housing and personal property needs related to the disaster. You will receive a letter from FEMA telling you what the money covers. Be sure to read the “Applicant’s Guide,” the booklet included with your letter, for additional information.

# EMERGENCY INFORMATION

## III (A)

### Emergency Information

#### **Air Crashes**

Due to the close proximity to air bases in Pennsylvania, the possibility of a crash exists. In the event of an air crash, any individual in the area should move immediately away from the crash site a minimum of 500 feet or more and then dial 911.

#### **Severe Weather Conditions**

Pennsylvania has been impacted by severe weather including snow, draught, tropical storms, hurricanes, and tornados.

- A tropical storm is a weather disturbance that originates over tropical waters and is characterized by high winds, heavy rains, and high coastal waters.
- A hurricane increases the intensity and possibility of damages and/or death with destructively high winds, extremely heavy rains, and flooding.
- A tornado is often associated with a severe thunderstorm yet is similar in hazard to a hurricane.

The National Weather Service will issue a “watch” where there is a possibility of the development of severe weather conditions. A “warning” is where the identified severe weather is expected.

In the event of the announcement of a “warning”, the individual should go to the basement or interior hallway of the lowest floor of a building. It is advisable to seek shelter immediately in an interior area which is farthest away from doors and windows. Where possible, shelter should be taken underneath a desk, heavy furniture, or a mattress.

#### **Locating Missing Family and Friends**

To register a displaced person, a missing relative, or a friend, or view the existing list of registrants, please visit the American Red Cross “Safe and Well List” at <https://disastersafe.redcross.org> or the International Committee of the Red Cross “FamilyLinks” website at [www.familylinks.icrc.org](http://www.familylinks.icrc.org). You may also call the American Red Cross’s Family Linking hotline at 877-568-3317.

To inquire about family and friends that did not evacuate the disaster area, contact the American Red Cross at 866-438-4636.



## **Inspecting the Damage**

During a disaster and in the cleanup, injuries occur. To avoid injury, use common sense and wear proper clothing, including clothes with long sleeves and long pants, and safety shoes or boots. Upon returning to dwellings evacuated before the disaster's arrival, be aware of possible structural, electrical, or gas-leak hazards. Electrical power and natural gas or propane tanks should be shut off to avoid fire, electrocution, or explosions. Try to return to your home during the daytime so that you do not have to use any lights. Use battery-powered flashlights and lanterns, rather than candles, gas lanterns, or torches.

## **Gas Leaks**

If you smell gas or suspect a leak, turn off the main gas valve, open all windows, and leave the house immediately. Notify the gas company, the police, fire departments, or State Fire Marshal's office, and do not turn on the lights, light matches, smoke, or do anything that could cause a spark. Do not return to the house until you are told it is safe to do so.

## **Electrical Damage**

Your electrical system may have been damaged. If you see frayed wiring or sparks when you restore power, or if there is an odor of something burning but no visible fire, you should immediately shut off the electrical system at the main circuit breaker. You should consult your utility company about using electrical equipment, including power generators. Be aware that it is against the law and a violation of electrical codes to connect generators to your home's electrical circuits without the approved, automatic interrupt devices. If a generator is on line when electrical service is restored, it can become a major fire hazard. In addition, the improper connection of a generator to your home's electrical circuits may endanger line workers helping to restore power in your area. All electrical equipment and appliances must be completely dry before returning them to service. It is advisable to have a certified electrician check these items if there is any question. PLEASE NOTE: Several deaths following past disasters have occurred due to fires. In many cases, fires were caused by the careless use of candles to light homes without electrical power. Use battery-powered lanterns, if possible, rather than candles. If you use candles, make sure they are in safe holders away from curtains, paper, wood, or other flammable items. Never leave a candle burning when you are out of the room.

## **Downed Power Lines**

If power lines are lying on the ground or dangling near the ground, do not touch the lines. Notify your utility company as soon as possible that the lines have been damaged, or that the power lines are down. Do not attempt to move or repair the power lines. Do not drive through standing water if downed power lines are in the water. If a power line falls across your car while you are driving, continue to drive away from the

line. If the engine stalls, do not turn off the ignition. Stay in your car and wait for emergency personnel. Do not allow anyone other than emergency personnel to approach your vehicle.

## **Animals**

Wild or stray domestic animals can pose a danger during or after the passage of a disaster. Remember, most animals are disoriented and displaced, too. Do not corner an animal. If an animal must be removed, contact your local animal control authorities. If you are bitten by any animal, seek immediate medical attention. If you are bitten by a snake, first try to accurately identify the type of snake so that, if poisonous, the correct anti-venom can be administered. Do not cut the wound or attempt to suck the venom out. Certain animals may carry rabies. Although the virus is rare, care should be taken to avoid contact with stray animals and rodents. Health departments can provide information on the types of animals that carry rabies in your area. For more information, see <http://www.cdc.gov/ncidod/dvrd/rabies>. Rats may also be a problem during and after a disaster. Take care to secure all food supplies, and remove any animal carcasses in the vicinity by contacting your local animal control authorities.

## **Drowning**

Although disaster winds can cause an enormous amount of damage, wind is not the biggest killer in such a storm. Nine of every ten disaster fatalities are drownings associated with swiftly moving waters. People who enter moving water with their cars, or who get on boats on lakes or bays when a disaster strikes the area are at grave risk of drowning, regardless of their ability to swim. Even very shallow water that is moving swiftly can be deadly. Cars or other vehicles do not provide adequate protection. Cars can be swept away or may break down in moving water. Be alert and follow hazard warnings on roadways or those broadcast by the media. Police and public works departments should be contacted for up-to-date information regarding safe roadways.

## **Chemical Hazards**

Be aware of potential chemical hazards you may encounter when returning to your home, especially if the disaster is accompanied by flooding. Floodwaters and high winds may have moved or buried hazardous chemical containers of solvents or other industrial chemicals. Contact your local fire department about inspecting and removing hazardous chemical containers. Avoid inhaling chemical fumes.

If any propane tanks (whether 20-lb. tanks from a gas grill or household propane tanks) are discovered, do not attempt to move them yourself. These represent a very real danger of fire or explosion, and if any are found, the fire department, police, or your State Fire Marshal's office should be contacted immediately. Car batteries, while flooded, may still contain an electrical charge and should be removed with extreme caution by using

insulated gloves. Avoid coming in contact with any acid that may have spilled from a damaged car battery.

### **Knowing Where and When It's Safe**

Continue to monitor your radio or television for up-to-date emergency information and find out what roads, areas, and buildings are safe to return to. You can get this information from public announcements or the authorities. Avoid moving water, regardless of depth or speed. Do not drive through flooded roads. Cars can be swept away or break down.

### **Building Safety**

Buildings may no longer be safe following a disaster or flood. There are a number of dangers that you need to be aware of as you return to and begin cleaning up your home or other building. In general, return to buildings during the daytime so that you don't have to use any lights and be aware of possible structural, electrical, or gas-leak hazards.

### **Utility Hazards**

Before entering a building, make sure the main electrical switch is off. Shut off electrical power and natural gas or propane tanks to avoid fire, electrocution, or explosions. Make sure that all electrical equipment and appliances are completely dry before you use them. Stay away from downed power lines. Notify the power company immediately. If you suspect a gas leak, leave immediately and notify the gas company. Do not do anything that could cause a spark, such as turn on lights, light matches, or smoke. Report utility damage to the authorities.

### **Other Injury-Prevention Measures**

To avoid other disaster related injuries, you should:

- learn proper safety procedures and operating instructions before operating any gas-powered or electric chain saw;
- with an electric chainsaw, use extreme caution to avoid electrical shock;
- when using any power equipment, always wear a safety face shield or eyeglasses, and gloves;
- avoid all power lines, particularly those in water;
- avoid wading in water. Broken glass, metal fragments, and other debris may be present in the water; and
- be careful of nails and broken glass when removing boards covering the windows.

Contact your state or local health department or utility company if you need additional safety information.

## **Cleanup**

Once you have established that no structural, electrical, or gas-related hazards exist in your home, dry and disinfect all materials inside the house to prevent the growth of mold and mildew. Walls, hard-surfaced floors, and many other household surfaces should be cleaned with soap and water and disinfected with a solution of one cup of bleach to five gallons of water. Be particularly careful to thoroughly disinfect surfaces that may come in contact with food, such as counter tops, pantry shelves, refrigerators, etc. Areas where small children play should also be carefully cleaned. Wash all linens and clothing in hot water or dry clean them. For items that cannot be washed or dry cleaned, such as mattresses and upholstered furniture, air dry them in the sun and then spray them thoroughly with a disinfectant. Steam clean all carpeting. If there has been a backflow of sewage into the house, wear rubber boots and waterproof gloves during cleanup. Remove and discard contaminated household materials that cannot be disinfected such as wall coverings, cloth, rugs, and drywall.

## **What Should Disaster Victims Know Before Returning Home after a Disaster?**

- Find out if the authorities have declared the area safe.
- If your area is under a curfew, allow travel time to and from your home. If your area is under martial law, obey all orders by authorities.
- Watch for debris on the road while driving;
- Return to your pre-determined assembly point and/or contact your pre-established out-of-area contact person. Make sure all family members have been accounted for and let others know of your status;
- Make sure the main electrical switch to your home is off before entering the structure;
- Be careful when entering a structure that has been damaged;
- If you suspect a gas leak, leave immediately and notify the gas company;
- If possible, listen to the radio or contact authorities to find out if sewage lines are intact before turning on the water or using the toilet;
- Report utility damage to the proper authorities;
- Continue to monitor your radio or television for up-to-date emergency information.

## **EMERGENCY INFORMATION**

### **III (B)**

#### **Courts**<sup>3</sup>

Although there is no current plan in place with Court Administration for Allegheny County or for the Administrative Office of the Pennsylvania Courts, one may be in the planning stages for the future. Generally, there is not a total disaster that closes down the entire court system in Allegheny County. Disasters tend to be localized in portions of the county.

The experience has been that court administration moves to get courts up and running as soon as possible by moving the court to a space available near the court. The necessary technical and computer facilities are moved or the proper equipment is brought in to replace lost equipment. Usually when one or two courts are damaged by fire or flood they are having hearings within a short period of time. Hearings that had to be canceled would be rescheduled as soon as possible and the current schedule would be maintained. The neighboring courts usually help out with staff and sometimes space and computers. The return to some semblance of normalcy is expected within a short period of time.

If it is impossible for the court to resume hearings relatively quickly after a disaster, any person scheduled for a hearing should contact Allegheny Court Administration at 412-350-5410 or the hot line described in Chapter I.

At the federal court level, a continuity of operations plan (COOP) has been adopted to address court disruptions at the time of a disaster as well as any disruption within a particular locality that does not rise to the level of a disaster but impedes operations. Check the web site for the United States District Court, Western District of Pennsylvania, at [www.pawd.org](http://www.pawd.org) for announcements and directions during any time of disaster.

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<sup>3</sup> ACBA District Justices Committee; U.S. District Court, Western District of Pennsylvania, Clerk of Court

# EMERGENCY INFORMATION

## III (C)

### Emergency Management<sup>4</sup>

#### **Introduction**

**A person impacted by a disaster must apply for FEMA benefits as soon as possible and usually must have applied within 60 days from the disaster declaration. The person must have a list of all disaster-related losses including home, car, job, and personal property. It is important that the person can provide information about current needs such as medical care, money for rent, current living arrangements, repair or replacement of home. Any appeal of a FEMA denied must be filed in writing within 60 days.**

For an extensive and excellent manual on FEMA and other disaster programs, representation and advocacy see the Florida Bar Foundation's Florida Legal Assistance Disaster Manual. (Available on line at: <http://www.flabarfndn.org/resources/disaster-manual>.)

#### **Disaster Declaration**

When the President of the United States declares a "major disaster" anywhere in the United States or its territories, federal assistance is made available to supplement the efforts and resources of state and local governments and voluntary relief organizations pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended 42 U.S.C. §5121, *et. Seq.* Disasters may also be declared by the governor of a state or mayor for more localized impact. The funding levels are contingent upon which governmental level declares an area a disaster.

Individuals, families, and businesses in the designated disaster area may be eligible for federal assistance if they live, own a business, or work in a zone that has been declared a Major Disaster Area. Help may also be available to those who have incurred sufficient property damage or loss and do not have insurance or other resources to meet their needs. The most important thing a disaster victim must do to obtain FEMA assistance is to register with FEMA. Victims should be encouraged to include information regarding disabilities or chronic health care needs on their FEMA applications in order to receive the full range of federal disaster relief assistance available to them. To register with FEMA toll-free at 1-800-621-FEMA (TTY: 1-800-462-7585).

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<sup>4</sup> ACBA Federal Court Section

## **FEMA Benefits Overview**

FEMA has established a policy for preventing and for rectifying duplication of benefits under 44 CFR 206.91. FEMA's duplication of benefits policy includes the concept of a sequence of delivery, which establishes the order in which the major forms of assistance should be provided. The agency that has the primary responsibility for delivering a certain type of assistance should provide that assistance first, and may do so without regard to other agencies with similar assistance lower in the sequence. Agencies are not prohibited from disrupting the sequence of delivery when it serves to expedite the recovery of an applicant. However, the agency that disrupts the sequence of delivery must take corrective action.

The sequence of delivery for major forms of assistance is as follows:

1. **Voluntary organizations**

Local and national volunteer organizations provide assistance during immediate emergency response as well as during recovery. These organizations provide emergency assistance in the form of food, clothing, shelter, medical, and transportation needs.

2. **Private insurance benefits**

Insured applicants must file a claim with their insurance company before receiving federal assistance. They may be eligible to receive disaster assistance if they have insufficient coverage or have items not covered by their insurance policy.

3. **Small Business Administration (SBA)**

The SBA offers low interest, long term loans to victims of disasters. Homeowners may be eligible for loans up to \$200,000 to repair disaster damaged primary residences. Homeowners and renters are eligible for loans up to \$40,000 to replace personal property such as furniture and clothing. Loans to businesses of all sizes and non-profit organizations are available up to \$1.5 million to repair damage to real estate, machinery, equipment, and inventory. Economic Injury Disaster Loans (EIDLs) are also available to small businesses unable to pay bills or meet operating expenses. For more information, follow the links for Disaster Recovery at [www.sba.gov](http://www.sba.gov) or call 1-800-659-2955.

4. **FEMA Individuals and Households Program (IHP)**

This program can pay for short and longer-term housing such as rental and *possibly* mortgage assistance, temporary housing (such as mobile homes),

housing repairs, and grants to purchase new housing. IHP also covers replacement of necessary personal items (clothing, furniture, appliances, etc.); transportation; other expenses or “serious needs”; and medical, dental, and funeral expenses.

5. **Cora C. Brown Fund**

This fund, named after Cora Brown who died in 1979 and bequeathed part of her estate to the federal government to be used solely for human suffering caused by natural disasters, is used for disaster victims who have exhausted all avenues of assistance, but who still have unmet needs. FEMA uses these funds under the authority of 42 U.S.C. § 5201(b) of the Stafford Act and 44 CFR 206.181.

**The Individuals and Households (IHP) Program (42 U.S.C. § 5174)**

This program consists of two parts--housing assistance and financial assistance to address “other personal needs.” The maximum benefit is \$26,200.

**Housing Assistance under IHP**

This part of the IHP program is designed to provide disaster applicants with a grant for their housing needs when their primary residence is destroyed, inaccessible or is uninhabitable. FEMA will announce a ceiling on this benefit; currently the maximum benefit is \$26,200. However, the victim may first have to apply for a SBA loan in order to be considered.

The four forms of temporary housing include:

a. **Assistance to rent** or lease alternate dwellings including rental units for up to 18 months. This continued rental assistance would be determined after the individual qualified for initial assistance of one to three months rent. FEMA will announce the amount of initial assistance (currently \$2,358) and the continued rental assistance (total IHP currently is \$26,200).

b. **Temporary housing** on military bases, housing projects, cruise ships, and in mobile homes when units are scarce); FEMA may provide in-kind assistance in the form of trailers, manufactured homes or other readily fabricated dwellings for use as temporary housing for up to 18 months subject to recertification of continuing eligibility.

c. **Money to make emergency repairs** to owner occupied dwellings. FEMA will refer those able to pay to SBA to pay for more extensive repairs. If a person can't afford to repay an SBA loan, they will be eligible for the repairs grant.



d. **Money to purchase** alternate housing. (Note: This can provide a down payment that can be combined with a SBA loan to buy a new home.)

Examples include:

- Repair or replace a car
- Pay for public transportation
- Replace clothes
- Replace school supplies including computers
- Replace work tools
- Replace household belongings, furniture, large appliances
- Repair or replace medical equipment including wheelchairs
- Moving and storage expenses
- Medical and dental expenses
- Funeral expenses

**Insurance:** FEMA will require the person to show that their insurance policy won't cover these costs before providing assistance. In addition, if a homeowner can afford to repay a loan, he or she will be referred to SBA first for money to replace their home. (See below.)

**Flood Insurance:** An individual that is in a flood zone may have problems receiving housing assistance, if they were in a previous disaster and did not purchase flood insurance after being advised to do so.

**Household Rules:** Usually, FEMA will determine who is in your household (all adults and children who lived together before the disaster) and will only make one payment per household. Individuals should be advised to indicate to the FEMA interviewer if they cannot continue to live with their previous household members.

**Other "financial needs"** Under IHP FEMA will also assist individuals in replacing lost personal property and meeting other basic needs.

1) **FEMA's Expedited Assistance:** This is the section of the law under which FEMA may determine a fixed amount that would be released to debit cards and/or checks for disaster victims. This money is intended to help victims meet their basic needs for such items as clothing, food, transportation, and housing. The volunteer attorney should check for a published notice as to the determination, amount, and method for application. For example, expedited assistance was not authorized or available for Hurricane Katrina Victims in 2005 but it was available for Hurricane Rita victims. It will be deducted from their final grant amount. It is advisable to tell your clients to keep receipts showing how they spent this money.

2) Other needs that can be paid for include:

- Cars, transportation
- Clothes (including school uniforms)
- Furniture, appliances, other household belongings
- Work tools
- Durable medical equipment such as wheelchairs
- Moving and storage expenses
- Medical and dental expenses not covered by Medicaid or insurance
- Funeral expenses

### **SBA Loans**

People who can afford to repay a loan (by FEMA's standard) will be referred to the Small Business Administration for a loan before being eligible for money for things such as housing repairs. Low interest SBA loans are available to both businesses and individuals. The loans include:

(1) **Business loans** of up to 1.5 million dollars to repair or replace disaster damage to property including inventory and business equipment. These loans include:

a. **Physical Disaster Loans** up to 1.5 million dollars to repair or replace property including inventory and equipment damaged in the disaster; and,

b. **Economic Injury Disaster Loans (EIDL)** of up to 1.5 million per business for small businesses that had property or inventory damaged and that lost business as a result of the disaster.

(2) **Home Loans:** If a person makes enough money to repay a loan the Small Business Administration will give them a loan of up to \$200,000 to buy another home.

### **FEMA Appeals**

A person can appeal a denial of benefits, the amount of the benefit, or other adverse actions by FEMA. To do so, they must file a written appeal within 60 days after the notice of decision is received. The appeal must be in writing and signed by them or their representative. FEMA has 90 days to issue a written decision, which is final. In the FEMA applicant's guide there is an appeal form and information.

### **Other Disaster Benefits**

Other forms of programs available to individuals hurt in the disaster include:

**1. Disaster Unemployment Assistance (DUA)**

DUA provides up to 26 weeks of financial help and employment services to people who are otherwise ineligible for regular state unemployment compensation. See Chapter VI (B) of this manual for more information. Note: People should apply as soon as possible for unemployment benefits since there is a one-week waiting period.

**2. Disaster Relief Medicaid**

Medicaid is a public health insurance program that provides simple, easy to obtain coverage for a period of at least four months following the disaster for low-income individuals affected and in need of medical coverage. See Chapter V (A) for more information on medical care after the disaster.

**3. Mental Health Crisis Counseling**

Funds are provided by FEMA as a grant to state and local mental health agencies to provide crisis counseling to help relieve grieving, stress, or mental health problems resulting from the disaster or its aftermath. See Chapter V (A) for more information.

**4. Expanded welfare and food programs for survivors**

In a disaster the Executive branch, Congress, and federal agencies often expand existing programs such as Medicaid, welfare, food stamps, and food programs to meet the new increased needs for this help. See Chapter V (C) of this manual for more information on public benefits.

**5. Tax Relief.**

People affected by a disaster who need help with tax matters can call the Internal Revenue Service at the number on the Resource List in the appendix. Additional information for affected taxpayers is provided at [www.irs.gov](http://www.irs.gov).

**6. Doing Business with FEMA**

For information about doing business with FEMA during disaster recovery, visit [www.fema.gov/ofm](http://www.fema.gov/ofm) or call the Acquisitions office at 202-646-4006.

## **Pennsylvania Emergency Management Agency**

**Pennsylvania also provides for public disaster assistance for qualified individuals. Volunteer attorneys should inquire for additional information at the Office of the Budget/Bureau of Audits at the address in Referral Sources, Appendix.**

### **Frequently Asked Questions**

- 1. I had extenuating circumstances that prevented me from applying for assistance before the registration filing deadline. I have damages from the disaster. What can I do?**

You may make a late registration within 60 days after the filing deadline. A letter will be sent stating you are not eligible for consideration for disaster assistance under the Individuals and Households program. The letter will contain information on how you can appeal this decision if you had extenuating circumstances that kept you from filing during the open registration period.

- 2. I need to return a check or pay money back to FEMA. Where do I send it?**

**Treasury Checks:** If you have not cashed the Treasury Check and wish to return it, or you have been advised in an official letter from FEMA to return the check, mail it to the Department of Treasury.

**Personal Checks/Cashiers Checks/Money Orders:** If you have already cashed the treasury check and wish to return the funds, or you have been advised in an official letter from FEMA to return the payment, send your personal check (or money order/cashier's check) to FEMA. Do NOT send cash.

**State Checks:** If you have received a check from your state for your damaged personal property and wish to return the check or have been advised in a letter to return the funds, you will need to mail the check/payment back to the state. The address will be listed on the letter that accompanied your check.

- 3. My home is not damaged, however a public road and/or bridge has been damaged and is preventing access to my home. Can FEMA help me?**

Yes. If damages to a public road or bridge prevents or restricts you from accessing your home, FEMA may be able to provide assistance.

- 4. If I own the bridge and/or road that is damaged, should I apply for assistance?**

Yes, if the private road or bridge damage prevents or restricts access to your home, FEMA may be able to provide assistance.

**5. What if I share ownership and responsibility for the road and/or bridge with other families, do they all need to register?**

All households who share in the responsibility of maintaining the private road and/or bridge should be encouraged to register, particularly if the damages prevent or restrict access to their homes.

# PROPERTY ISSUES

## IV (A)

### Real Property and Mortgages<sup>5</sup>

#### Introduction

The laws governing real property estates including perfection and foreclosure of security interest in Pennsylvania are set forth in the Pennsylvania Statutes. The law of real property conveyancing, leasing and lending permits lenders to engage in self help. Foreclosures and tenant evictions do not have to be judicial. With regard to personal property, Pennsylvania has adopted Article 9 of the UCC with some material changes.

In the questions and answers below, we have tried to anticipate the practical questions that Pennsylvania homeowners, tenants and business owners will ask. This guide is intended to serve as a practical and useful source of information in the frantic aftermath of a disaster. This should not, however, be considered a substitute for legal advice, and disaster victims should be directed to consult with counsel whenever possible.

#### CONSUMER PROTECTION ISSUES

##### Overview

Disasters are breeding grounds for unscrupulous consumer practices. Disaster victims, particularly senior citizens, lower-income families, 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 in Pennsylvania. In most instances, the matters should be referred to the State Attorney General's Bureau of Consumer Protection (see numbers below).**

##### Caveat Emptor -- Let the Buyer Beware

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<sup>5</sup> ACBA Real Property Section Council and Construction Law Section Council—  
Note regarding the scope of this outline: We do not address in this outline the mechanics of making insurance claims or the legal issues relating to insurance claims. As we understand it both of these topics are addressed in the Insurance outline.

After any disaster, four factors typically 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; 3) limitations on the supply of available services because of damage to service providers; and 4) lack of financial resources to make repairs immediately (i.e., limitations on ability to withdraw funds from a local bank).

### **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.

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:

- **Verify licensing**, if applicable, with appropriate regulatory agencies;
- **Verify company legitimacy** with local Better Business Bureaus;
- **Obtain comparison bids** with lists of services provided and material costs;
- Obtain all **estimates in writing**;
- Speak with other customers to **verify satisfaction**;
- **Read all contracts** or service agreements **before signing**; and
- File complaints with appropriate regulatory agencies if confronted with potential fraud or abuse.
- If consumers have access to the Internet (i.e., consumers should be directed to visit a public library of a non-impacted area for internet access), search the company's name on a search engine (i.e. Google) to further verify important information.
- Obtain information about all subcontractors employed by the general contractor. Generally, in times of disaster, subcontractors spring up that are new to the business. Also the general contractor may be affected by the limits of supply and demand and hire subcontractors without performing a background check.
- Follow same procedures for a subcontractor that you would follow for a general contractor.

The telephone number for the Pennsylvania Office of the Attorney General Office is 717-787-3391.

The regional office numbers for the Attorney General Bureau of Consumer Protection are as follow:

Harrisburg: 717-787-7109  
Allentown: 610-821-6690  
State College: 814-863-3900  
Ebensburg: 814-471-1831  
Philadelphia: 215-560-2414  
Scranton: 570-963-4913  
Erie: 814-871-4371  
Pittsburgh: 412-565-5135

Consumers are urged to contact their 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. Consumers are also urged to contact the local newspaper's consumer desk to notify them of scams.

### **Price Gouging**

Title 73 §§201-1-201-9.2 of the Pennsylvania Statutes Annotated entitled “Unfair Trade Practice and Consumer Protection Law” makes it a deceptive trade practice to take advantage of a disaster by selling or leasing fuel, food, medicine, or another necessity at an exorbitant or excessive price, or even demanding an exorbitant or excessive price for these items. Pennsylvania criminalizes deceptive business practices. Consumers are urged to contact the Pennsylvania Attorney General at 717-787-3391. This statute can be enforced, by the Attorney General, by local District Attorneys, or an action can be brought privately by a citizen.

### **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, minorities with limited English skills or homeowners with fixed incomes below \$24,000.

Consumers can go to <http://www.ftc.gov/bcp/online/pubs/homes/eqscams.htm> for helpful tips on home equity scams. The following key points are summarized from this website:

Don't:

- Agree to a home equity loan if you don't have enough income to make the monthly payments.



- Sign any document you haven't read or any document that has blank spaces to be filled in after you sign.
- Let anyone pressure you into signing any document.
- Agree to a loan that includes credit insurance or extra products you don't want.
- Let the promise of extra cash or lower monthly payments get in the way of your good judgment about whether the cost you will pay for the loan is really worth it.
- Deed your property to anyone without first consulting an attorney.

Do:

- Ask specifically if credit insurance is required as a condition of the loan. If it isn't, and a charge is included in your loan and you don't want the insurance, ask that the charge be removed from the loan documents. If you want the added security of credit insurance, shop around for the best rates.
- Keep careful records of what you've paid, including billing statements and canceled checks. Challenge any charge you think is inaccurate.
- Check contractors' references when it is time to have work done in your home. Get more than one estimate.
- Read all items carefully. If you need an explanation of any terms or conditions, talk to someone you can trust, such as a knowledgeable family member or an attorney. Consider all the costs of financing before you agree to a loan.

### **Home Repair/ 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. FEMA will provide some funds for homeowners to repair, replace, or rebuild housing. Examples currently include:

- \$5,100 to make emergency repairs
- \$10,000 to buy another home
- \$26,200 to repair a damaged home (IHP program)

The homeowner should check with the Small Business Administration (SBA) to determine if they qualify for a low-interest loan of up to \$200,000. Volunteer attorneys should also ask if the home had mortgage insurance.

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 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 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.

## **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. Lower income and minority borrowers, as well as elderly homeowners, are usually targeted by predatory lenders. They encourage borrowers to lie about their income in order to get a loan; knowingly lend the borrower more money than he/she can repay; charge unnecessary fees; pressure borrowers into high-risk loans and use high pressure tactics to sell home improvements and then finance them at higher interest rates. These predators pounce on desperate situations to empty their pockets. Following are a few tips for consumers to prevent becoming a victim of one of these schemes:

- Beware of lenders who claim that they are the only hope for a loan or ask borrowers to sign a contract/loan agreement with missing information.
- Beware when lenders say refinancing your home can solve credit or money problems.
- Always interview several contractors and lenders. Check with friends or family for recommendations.
- Research lenders, contractors, appraisers, etc. with the Attorney General's Office or the Better Business Bureau. Check out their complaint history.
- Never make false statements on a loan application. Any lender who allows this is fraudulent.
- Do not let anyone convince them to borrow more money than they know they can afford.
- Attend homeownership education courses. They are available through the U.S. Department of Housing and Urban Development (HUD) or counseling agencies.
- To report fraud or abuse in any HUD Title I program call 1-800-569-4287/TTY 1-800-483-220.
- Local HUD office telephone numbers are:

- Pittsburgh 412-644-6428;
- Philadelphia 215-656-0500.
- Local Better Business Bureaus include:
  - Northeastern PA-570-614-4222
  - Eastern PA-215-985-9313
  - Western PA-412-456-2700.

### **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. In Pennsylvania, once the finance company files a formal lien with the County Prothonotary, 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. Consumers should also be advised of the tips outlined in the above sections as ways to guard against fraudulent lenders.

### **Housing for Disabled Individuals**

People needing accessible housing because of disability can contact the Allegheny County Housing Department at 412-355-8940 for a reference to a local housing agency with available housing suitable for persons with disabilities.

### **Hiring Contractors for Disaster Repairs**

It is also critical for the volunteer lawyer to educate the client about avoiding scams and choosing reputable people to do needed repairs and services. FEMA provides the following warnings when victims hire contractors for disaster repairs:

- Get a written estimate. Compare services and prices before making a final decision. Also, read the fine print. Some contractors charge a fee for a written estimate, which is often applied to the price of subsequent repairs they make. Do not sign any contracts for major repairs until the insurance representative has determined how much damage there is and how much the company will pay.
- Check references. Contractors should be willing to provide the names of previous customers.
- Call several former customers who had similar work done to make sure they were satisfied with the job.

- Ask for proof of insurance. Make sure the contractor carries general liability insurance and workers' compensation. If the contractor is not insured, the homeowner may be liable for accidents that occur on the property, including injuries to the contractor's workers.
- Use reliable, licensed contractors. Call the local Better Business Bureau to inquire about a business before signing a contract.
- People should be especially alert for phone or door-to-door solicitors who hand out flyers and promise to speed up the insurance or building permit process, and those who ask for large cash deposits or advance payments in full.
- Be wary of anyone claiming to be "FEMA certified", because FEMA does not certify or endorse any contractor.
- Insist on a written contract. A complete contract should clearly state all the tasks to be performed, all associated costs and the payment schedule. Never sign a blank contract or one with blank spaces. Make sure the contract clearly states who will apply for the necessary permits or licenses. Have a lawyer review the contract if substantial costs are involved, and keep a copy for your records.
- Get any guarantees in writing. Any guarantees made by the contractor should be written into the contract. The guarantee should clearly state what is guaranteed, who is responsible for the guarantee and how long the guarantee is valid.
- Obtain a local building permit if required. Permits may be required for site work, other than demolition, and for reconstruction. Contact your local government for permit information.
- Make final payments when the work is completed. Do not sign completion papers or make the final payment until the work is completed to your satisfaction. A reputable contractor will not threaten you or pressure you to sign if the job is not finished properly.
- Pay by check. Avoid on-the-spot cash payments. The safest route is to write a check to the contracting company. A reasonable down payment is 30 percent of the total cost of the Project, to be paid upon initial delivery of materials. Federal law gives consumers a three-day "cooling off" period for unsolicited door-to-door sales of more than \$25.
- Canceling a contract. This should be done within three business days of signing.
- Be sure to follow the procedures for cancellation that are set out in the contract.
- Send the notification by registered mail with a return receipt to be signed by the contractor.
- Report problems with a contractor or fraud to the Pennsylvania Office of the Attorney General.

## **Section 8 Housing**

Any person who was a Section 8 voucher holder or resident of public housing should contact HUD at the telephone number in the Resources List, Appendix. Volunteer attorneys should check the following link: <http://www.hud.gov/offices/pih/pha/contacts/>.

## **Commonly Asked Housing Questions**

**1. My house was damaged and I cannot live in it. Do I need to pay my mortgage?**

The short answer is yes. It is not typical in Pennsylvania for a note secured by the borrower's real estate to include any sort of forbearance provision that would be triggered by storm related damage or destruction of the property. You must pay your mortgage even if your house is damaged and you cannot live in it. However, check with your lender since many companies, when a disaster has occurred, will provide a grace period of several months to delay payments (although interest may continue to be added). HUD has instructed FHA-approved lenders to provide foreclosure relief – a 90-day moratorium on foreclosures of FHA-insured properties in the disaster area. HUD and some lenders may have forgiveness programs under which they will suspend your payments for a period of time. Call your lender to find out if it has such a program. Also, in the case of FHA insured properties, lenders may be instructed by HUD to provide borrowers with a grace period before instituting foreclosure proceedings.

**2. What if I cannot pay my mortgage because of a disaster related financial hardship?**

If you have received a written foreclosure notice as a result of a disaster related financial hardship, you may be eligible for Federal Emergency Management Agency (FEMA) payments to help you with your mortgage payments. Lenders may have forgiveness programs under which they will suspend your payments for a period of time (call them to find out). If your mortgage is FmHA financed or FHA-insured and you fall behind in your payments because of a disaster related financial hardship, you have special rights. Contact the Pennsylvania Emergency Management Agency (PEMA) Individual Assistance Office (800-635-9692) for information about federal or state disaster related assistance, including possible Home Assistance Loans through the U.S. Small Business Administration to cover uninsured and underinsured losses. In addition, contact the Pennsylvania Housing Finance Agency (PHFA) at 800-342-2397 about the Homeowners' Emergency Mortgage Assistance Program (HEMAP). Under HEMAP, you may qualify for a loan of up to \$60,000 to bring delinquent mortgage payments current. The PHFA can also put homeowners in touch with an approved homeowners' counseling agency. If you have income and you want to keep your house, you may be able to file a Chapter 13 bankruptcy. In this type of bankruptcy, the homeowner proposes a plan of how he/she will pay regular mortgage payments and other living expenses, including an amount paid each month to reduce mortgage arrears. If you think you want to file a Chapter 13 bankruptcy, contact an attorney. If you

do not know an attorney, you can obtain a referral from the Allegheny County Bar Association at 412-261-5555.

**3. What if I can't pay my mortgage because of job or salary interruptions following the disaster?**

Most home loan documents require the homeowner to make mortgage payments even after a disaster—even if your house is damaged and you can't live in it. However, many lenders will allow the owner to delay mortgage payments for several months after a disaster (although interest may continue to be added). Many lenders will make loan modifications to allow the missed payments to be added to the loan, thereby lengthening the term of the mortgage. You need to communicate with your lender and tell the lender about the disaster and your temporary inability to pay. The lenders will nearly always work with you. If your mortgage is FmHA financed or FHA-insured and you fall behind in your payments because of a disaster related financial hardship, you have special rights.

**4. How do I contact my mortgage company?**

Web sites are the easiest option. We are aware, however, that many clients will not have Internet access. FEMA serves as a clearinghouse for disaster relief information, and are accessible through 800 numbers and personal representatives at shelters. Clients may be able to find lender contact information through those agencies. Consumers might also find it helpful to contact their local recorder of deeds office. FEMA's Disaster Aid Hotline is 1-800-621-FEMA (3362); 1-800-462-7585 (TTY).

**5. Can my mortgage holder foreclose on my home if I can't make the payments?**

Again, the short answer is yes. The typical residential property mortgage in Pennsylvania doesn't include forbearance due to storm damage and allows the lender to foreclose following default.

**6. What should I do if I receive a notice that my lender is going to foreclose on my home for non-payment of the mortgage because of a disaster related financial hardship?**

If you have received a written foreclosure notice as a result of a disaster-related financial hardship, you may be eligible for Federal Emergency Management Agency (FEMA) assistance to help you with your mortgage payments. You may file an application for FEMA benefits at a Disaster Assistance Center (DAC) site. If your mortgage is FHA-insured or FmHA financed, you may be entitled to reduced or suspended payments. Your lender must notify you of this right and give you an opportunity to seek help before the lender begins foreclosure

proceedings. But, you must meet the deadlines the lender will give you. If you have income and you want to keep your house, you may be able to file a Chapter 13 bankruptcy. In this type of bankruptcy, the homeowner pays regular mortgage payments that accrue after the bankruptcy and all other living expenses and also pays an amount every month toward the mortgage installments, which were delinquent prior to the bankruptcy. If you think you may want to file a Chapter 13 bankruptcy, you should consult an attorney.

**7. In the event my lender is uncooperative, do I have any other recourse?**

At a minimum, consult an attorney. The ACBA Lawyer Referral Service can be reached at 412-261-5555. The Pennsylvania Bar Association (PBA) also should be able to provide assistance. The number to contact the PBA is 800-932-0311.

**8. I have homeowner's insurance, but I was told it will take months for an adjuster to look at my house and then it will take longer for a check to be issued – am I eligible for any type of assistance because my house needs lots of expensive repairs, and I'm not even sure I can live there until it is repaired?**

If you have homeowner's insurance, you will most likely be eligible for money for living expenses while you are unable to live in your house. You need to contact your insurance company. If your insurance company is not responsive, contact the Pennsylvania Insurance Department (Pittsburgh Regional Office: 412-565-5020). If you do not have homeowner's insurance then you may be eligible for assistance under the Assistance for Individuals and Households program to pay for necessary repairs to essential parts of your home. You may apply for assistance by telephone through FEMA at 1-800-621-3362. If you do not have homeowner's insurance or if you are underinsured, you may be eligible for federal or state disaster related assistance including Home Assistance Loans through the U.S. Small Business Administration to cover uninsured or underinsured losses. Contact FEMA (800-621-3362) or PEMA (800-635-9692) for further information. Note that homeowners' insurance policies do not typically cover damage resulting from earthquakes or flooding. Information about flood insurance can be obtained from the National Flood Insurance Program (800-621-3362).

**9. What if I live in a condominium?**

If you live in a condominium or pay maintenance fees to any type of homeowners' association, you may be required to pay your maintenance fees even if the homeowners' association has not repaired the common areas or you do not like the way the repairs are being made. You should attend the homeowners' association meetings to voice your concerns and talk with other homeowners and members of the condominium board about your complaints. A group of you may

want to seek legal advice. However, depending on the operative condominium documents, the failure to pay maintenance fees may give rise to a lien on your condominium unit.

**10. Can I sue my neighbor whose property ran into or fell on my property during the disaster?**

Your neighbor will not be held liable for injuries or damages caused by a disaster or “Act of God” where there is no fault or negligence on their part. However, if your neighbor negligently maintained his/her property, and such negligence gave rise damages to you, you may have a claim against your neighbor. At a minimum, consult an attorney. The ACBA Lawyer Referral Service can be reached at 412-261-5555.

**11. What can I do with the property of my neighbor which the disaster carried over onto my land?**

When personal property is carried away (e.g. by a hurricane or flood) and comes to rest on the land of another, it still remains the personal property of the original owner, who may enter and retrieve the personal property, so long as such entry and retrieval do not cause a breach of the peace. If the landowner refuses to allow the original owner to enter, the original owner should not enter the property by force, but the original owner will have an action against the landowner. On the other hand, if the landowner finds another’s lost property, the landowner has (i) the right to possession against all others but the true owner, (ii) no obligation to preserve the property, and (iii) may move the property if necessary to use the land, provided such action is taken in a reasonable manner.

**12. How will I know if my property is safe to move back to?**

Government agencies and FEMA will make this decision. How they will make it, and when, are issues beyond the scope of this outline.

**13. Can my property be condemned?**

Yes. Agencies with appropriate jurisdiction (HUD and local public housing agencies in the respective municipalities in the context of public housing), (FEMA and other local federal agencies in the context of private property) will make the decision whether a given structure is habitable.

**14. If the property is condemned due to a disaster, will I be paid for it?**

This form of condemnation (determining that a structure is no longer habitable) is not a “taking” for public use. The government would not be liable to the property



owner for its value. Insurance or FEMA or similar relief will be the sole source of recovery.

**15. Is flood damage to my home covered under my insurance policy?**

Your homeowner's insurance policy (sometimes called a "casualty insurance policy," "hazard insurance policy," or "fire and extended coverage policy") normally does not cover flood damage. The policy may cover water damage inside the home from direct or blowing rainfall, but it normally does not cover damage from surface water or rising water. Windstorm insurance normally will be limited to greater-than-normal wind conditions, such as from a disaster. You should read your policy, talk to your insurance agent, and consult an attorney if you have questions.

**16. Does my automobile insurance cover the damage to my car resulting from the disaster?**

Normally, disaster damage to an owner's vehicle will be covered under the owner's comprehensive auto coverage, although specific language in the policy and any express policy exclusions will control.

# PROPERTY ISSUES

## IV (B)

### Landlord Tenant Issues<sup>6</sup>

#### **Introduction**

Under Pennsylvania law there is no specific statute or code that concerns the rights of tenants and landlords in emergency or disaster situations. However, there are sections of the Landlord Tenant Act of 1951 (68 P.S. 250-101 et seq.) and case law from which guidance can be gleaned in dealing with these situations. Likewise, the principles set forth in destruction clauses of commercial leases can give guidance as well.

Section 250-502-A of the Landlord Tenant Act states that retention of control of common areas such as stairways, passages, common facilities, etc. remains in the landlord who has the duty of reasonable care for safety in use of those areas, while case law has recognized an implied warranty of habitability in residential leases. This warranty is designed to insure that a landlord will provide facilities and services vital to the life, health, and safety of the tenant and to the use of the premises for residential purposes. Breach of this warranty by a landlord allows an injured tenant to recover damages for all injuries sustained whether to his person or property if they have been caused by the landlord's breach. Acts of God are not covered by this warranty but if a landlord fails to take necessary steps after a disaster to make the property habitable and continues to demand rent, the situation appears to fall under breach of the warranty.

An injured tenant may also proceed under general principles of tort law, without proving a breach of the implied warranty of habitability and can recover damages for injuries proximately caused by the landlord's failure to exercise reasonable care to make the premises safe.

Accordingly, even without a statute or code to specifically address emergencies or disasters in residential housing situations, a tenant can find support under the law for relief.

#### **Housing Issues**

Lawyers can assist disaster victims with housing and consumer law issues by educating them about their rights, negotiating with creditors, financial institutions, and collection agencies for moratoriums and extensions of loan and bill payments, and advising clients about their rights regarding consumer contracts and collection agency activities. To facilitate handling of housing issues, the index of Pennsylvania statutes is attached in the Appendix.

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<sup>6</sup> ACBA Women in the Law, Real Property Section Council, Construction Law Section Council

People needing accessible housing because of disability or who are denied housing because of disability specifically, can contact the Advocacy Center for Elderly and Disabled at 800-711-1696 for referrals or disability rights information. The Department of Health and Hospitals—Office for Citizens with Developmental Disabilities has established four OCDD Response Teams to facilitate the handling of requests from people with disabilities, their families, providers, employees and the community. The teams are established to locate people with developmental disabilities and their families who have been displaced; handle requests and questions regarding relocation of people with developmental disabilities; locate employees of developmental centers who have been displaced; and field offers of donations of funds, staff or volunteers who would like to assist people with developmental disabilities.

### **FEMA/HUD Programs and Questions**

The Federal Emergency Management Assistance program (FEMA) has established a single toll-free number, 1 (800) 621-FEMA (3362), to assist the victims of a disaster with housing assistance. The number operates 24 hours a day, 7 days a week. All disaster victims must be registered with FEMA to receive disaster assistance.

The U.S. Department of Housing and Urban Development (HUD) creates housing programs specific to each type of disaster. For updated information concerning a disaster in your area, please review HUD's web page at [www.hud.gov](http://www.hud.gov). Some of the current programs designed assist homebuyers and homeowners after a disaster include the following:

- HUD's Section 203(k) loan program enables homebuyers and homeowners who have lost their homes to finance both the purchase and/or refinancing of a house and the cost of its rehabilitation through a single mortgage. It also allows homeowners who have damaged houses to finance the rehabilitation of their existing single-family home. This program encourages lenders to make mortgages available to borrowers who would not otherwise qualify for conventional loans on affordable terms and to residents of disadvantaged neighborhoods.
- HUD has a special mortgage insurance program under Section 203(h) of the National Housing Act to assist disaster victims. Under this program, individuals or families whose residences were destroyed or damaged to such an extent that reconstruction or replacement is necessary are eligible for 100 percent financing.
- HUD has an obligation under Section 504 of the Rehabilitation Act to make a minimum of 5% of units or at least one, whichever is greater accessible to people with mobility impairments and 2% or at least one unit accessible for people with visual or hearing impairments if that housing is built or renovated with federal funds.

Tenants who lived in Public Housing Authority apartments that are no longer habitable or tenants with Housing Choice Vouchers (formerly Section 8) who rented from private landlords will have rights in addition to state law. Tenants with Housing Choice Vouchers generally have a right to move and use the Vouchers in a new location. Disabled tenants generally should be allowed additional time to find new housing, and may, in some circumstances, be eligible for higher rent payments and should be granted reasonable accommodations in complying with some of the Housing Choice Voucher rules when needed to afford them an equal opportunity to participate in the program.

### **Frequently Asked Questions**

**1. Must I continue paying rent even though my apartment has been completely destroyed or severely damaged?**

Under Pennsylvania law, you are not required to pay rent if your property is destroyed or so damaged as to render it uninhabitable. You may move out, stop paying rent, and you are entitled to have your security deposit returned. However, if you continue to occupy the property even though it could reasonably be considered unlivable, you must continue paying rent. If the property is livable but partially damaged, you are only entitled to a reduction of rent.

These default protections may be altered by the terms of your lease.

If a dwelling is certified as unfit for human habitation, the tenant's duty to pay and the right of the landlord to collect rent is suspended without affecting the other terms or conditions of the landlord-tenant relationship. (35 P.S. §1700-1). If the duty to pay rent is suspended and the tenant continues to occupy the dwelling, the rent withheld should be deposited by the tenant in an escrow account in a bank or trust company approved by the city or county. Such rent should be paid to the landlord when the dwelling is certified as fit for human habitation. If the dwelling is not fit for habitation within 6 months, any moneys paid into the escrow account shall be returned to the tenant.

**2. The premises are totally unusable because of the disaster. Do I have to permanently move out even though I want to stay?**

Again, if a dwelling is deemed unfit for human habitation, the tenant may continue to occupy the premises and deposit rent into an escrow account.

**3. If the dwelling is partially unusable because of the disaster and if I don't want to permanently move out, can my rent be partially abated (temporarily reduced)?**

There is no law in Pennsylvania allowing for rent reduction because of damage caused by a natural disaster.

**4. May I withhold payment of rent because of the disaster or because the landlord has failed to timely repair the dwelling after the disaster?**

No. You will not be able to withhold rent because of the disaster. However, if the unit is certified as unfit for human habitation, you can move out. You may be able to terminate your lease or make repairs and deduct the cost of the repairs from your rent.

All residential leases in Pennsylvania are subject to an implied warranty of habitability. The warranty of habitability cannot be waived and requires a landlord to keep the leased property in a sanitary, safe and habitable condition. If you believe the warranty of habitability has been breached, notify your landlord by registered mail, return receipt requested, of the defects that need to be fixed.

If the landlord fails to correct the defects in a reasonable period of time, contact an attorney. You may qualify for legal assistance through Neighborhood Legal Services (412-255-6700). If you continue to occupy the premises and the landlord does not fix the damage to your apartment caused by the disaster, Pennsylvania law allows a tenant to withhold rent from the landlord when the dwelling is deemed unfit for human habitation as long as the tenant deposits the rent into an escrow account.

**5. How could I pay rent if I wanted to?**

For residential leases, the landlord probably is local and probably had to evacuate just like the tenant. Tenants should be advised not to mail payments until the USPS procedures for forwarding mail to evacuees are clarified, or until the tenant can verify the landlord is receiving mail at the old address. You may advise the tenant to pay the rental payment into an escrow account until the landlord's address is established, to avoid any future problems.

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

A tenant has the right to terminate a lease if the premises have become uninhabitable. The premises will be considered uninhabitable if it does not meet the standards set by the local housing code, or is otherwise unsafe or unsanitary. A few examples of conditions that might render your residence uninhabitable are loss of heat, loss of plumbing or water, presence of toxic fumes, or large roof leaks. If these damages are caused by a sudden, non-manmade force, the landlord is under no obligation to repair the residence, but the tenant may terminate the lease by vacating the premises.

Once the tenant terminates the lease, the tenant must provide the landlord with written notification of the tenant's new address. The landlord has 30 days to either return the security deposit or provide the tenant with a written list of the damages the landlord claims the tenant is responsible for, including unpaid rent. If the damages and unpaid rent are less than the amount of the security deposit, the landlord must refund the balance to the tenant within the 30 day time period. If the landlord does not send the tenant the deposit or the written list of damages within 30 days, the landlord forfeits his right to the tenant's security deposit and the tenant can sue the landlord for double the amount of the tenant's original security deposit. This protection of a tenant's rights cannot be waived by contract, but the landlord will not be liable to the tenant if the tenant does not provide the landlord with the tenant's new address in writing.

If the landlord fails to provide a written list within thirty days, the landlord forfeits all rights to withhold any portion of the security deposit, including any unpaid interest thereon, and forfeits his right to bring suit against the tenant for damages to the premises. The landlord will have the burden of proving the amount of damages to the premises.

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

Your landlord may also be experiencing financial hardship until his/her insurance money comes through for repairs. Talk to your landlord to see if the rent can be reduced until the apartment is repaired. See if the landlord will allow you to move to another unit in the building that is livable. If the premises are uninhabitable, you may terminate the lease. (See #6 above).

8. **What if I do not have any renter's insurance on my property?**

If you did not have renter's insurance, see if your landlord had insurance to cover your belongings. If your losses are not covered by any insurance policy, you may be able to get help from FEMA's Individuals and Households Program (IHP) grant for replacement of necessary items of personal property. You may apply for these benefits through FEMA at 1-800-621-3362 or the number provided in the Hot Line. If the disaster is under the jurisdiction of FEMA, you may be able to get an Individual and Family Grant (IFG) from FEMA to replace necessary items of personal property. You may apply for these benefits at the FEMA DAC sites. You may also wish to contact the Red Cross, which may be able to help you.

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

If you had renter's insurance at the time of the disaster, contact your insurance company. If your situation is desperate, make sure you describe your situation to the insurance company; if the company agrees that there is coverage, you can ask for an advance payment to cover a part of your loss. If your insurance company is not responsive, contact the Pennsylvania Insurance Department (Pittsburgh Regional Office: 412-442-4315).

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

If the unit is certified as unfit for human habitation, you can move out. You may be able to terminate your lease or to make repairs and deduct the cost of the repairs from your rent. All residential leases in Pennsylvania are subject to an implied warranty of habitability. The warranty of habitability cannot be waived and requires a landlord to keep the leased property in a sanitary, safe and habitable condition. If you believe the warranty of habitability has been breached, notify your landlord by registered mail, return receipt requested, of the defects that need to be fixed. If the landlord fails to correct the defects in a reasonable period of time, contact an attorney. You may qualify for legal assistance through Neighborhood Legal Services (412-255-6700). If you live in the City of Pittsburgh, you may be able to pay your rent into escrow if your apartment has been determined to be unfit for human habitation by the County Health Department. If the landlord fails to correct the problem within six months, you may be entitled to keep the rent you paid into escrow. Contact the Housing and Community Environment Office of the Health Department at 412-350-4046.

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

Not necessarily. When there is a lease, the landlord must honor the lease unless the dwelling is totally unusable or the lease contains an express provision allowing the landlord to terminate the lease in the event of fire, flood, or similar casualty. However, in a month to month lease, if the landlord provides sufficient notice of termination, the lease will terminate at the end of the lease term (typically the end of the following month), and you must vacate the premises. Pennsylvania law provides that a landlord cannot terminate a lease unless the tenant's lease term has expired, the tenant has forfeited the lease by breaching its conditions, or the tenant fails to pay any rent that is due. Even if any of those things have occurred, your landlord still must provide written notice of his intent to terminate the lease, and the time period in which to move out of the apartment. See 68 P.S. § 250.501 for the applicable time periods in which the tenant must move from the apartment. Please note that you may waive your rights to this protection in the terms of your lease. In that case, your lease will control what rights you have against your landlord. The lease may also permit the landlord to terminate the lease under other circumstances. In Pennsylvania, even when the

landlord has the right to terminate the lease, the landlord does not have the right of self-help evictions and cannot turn off utilities, change locks, etc. to force out a tenant. Instead, the landlord must file an ejection proceeding in court. If your landlord does lock you out, you can call the police, and you should consult a lawyer regarding an action for damages. If you do not know a lawyer, a referral can be obtained from the Allegheny County Bar Association Lawyer Referral Service at (412)261-5555.

**12. Can I sue my landlord for injuries I suffered in my apartment or office during the disaster?**

Where the injury results from the disaster itself and not from defects in the premises, there is no liability of the landlord for such injuries. However, the tenant may recover for injuries suffered where the injury was due to the landlord's failure to properly maintain common areas of the property before the disaster. One example of this would be if the tenant was injured while attempting to escape from the property during the disaster and was hurt because the common fire escape was not in a safe condition even before the disaster began. If the injury results from the disaster itself, the landlord has no liability for your injuries.

**13. What can happen and what should I do if I cannot pay the rent on my dwelling because of job or salary interruptions following the disaster?**

Temporary government rent assistance may be available from the Federal Emergency Management Agency (FEMA) or other governmental agencies. However, the rent will still be due.

**14. What should I do if I am served with an eviction lawsuit?**

If an eviction lawsuit is served on you, you should carefully read the papers and find your deadline for filing an answer or appearing in court. You can defend yourself in court or you can call a legal services program for information or possible representation.

**15. How can I recover my personal property from the leased premises?**

If the leased premises has been secured by FEMA, FEMA and federal security officials are going to be in control of when and how evacuees are allowed to return to their homes. Between the time of the disaster and when the agencies permit a return, the best advice we can give an evacuee is to try to contact the landlord and determine whether the landlord (i) knows anything about the condition of the property, and (ii) has been able to do anything to secure the property.



**16. May I recover damages against my landlord for injuries or property damage I suffered as a result of the disaster?**

When the injury or property damage results from a natural disaster and not from the landlord's negligence, the landlord is not liable for such injuries or property damage. However, the law does not prevent suits against the landlord for injuries or property damage resulting from the landlord's negligence. The landlord can therefore be sued if the landlord's negligence caused or contributed to the tenant's injuries or damage from the disaster.

**17. I have suffered personal injuries or loss or damage to my personal belongings from the disaster. May I recover damages against my landlord or the previous homeowner if they knew about the possibility of flooding and failed to inform me?**

If the landlord or seller made an affirmative misrepresentation concerning the possibility of flooding, the tenant or buyer may be able to sue the landlord or seller for fraud to recover for property damages or personal injuries. If you knew, however, that the property could flood or did not rely on the affirmative misrepresentation, then you will not be able to recover damages. If the landlord or seller said nothing about the possibility of flooding, then you will probably not be able to recover any damages. Generally, the mere failure to disclose a fact known by the seller or landlord is not fraud. However, failure to disclose the possibility of flooding may, under certain circumstances, support a lawsuit against a landlord or seller who knew of past flooding or knew of the possibility of flooding. Active concealment of known past flooding (for example, painting over flood water marks on walls) may also be the basis for tenant recovery. See 37 Am. Jur. 2d, Fraud and Deceit, 144-146.

**18. Can I recover damages against my landlord or the previous homeowner if they didn't know about the possibility of flooding?**

No. As a general rule, the tenant or buyer cannot recover from the landlord or previous owner a loss or damage from flooding if the landlord or previous owner knew nothing about past flooding or the possibility of flooding, and did not tell the tenant or buyer that the property was not subject to flooding.

**19. May I sue the local, state or federal government for damages caused by the employees of any local, state, or federal government in connection with the disaster?**

Under some circumstances, the government may have liability if its employees were negligent and caused the damages. However, under the doctrine of "sovereign immunity" governmental authorities are generally immune from liability for the negligent acts of their agents and employees. The doctrine of

sovereign immunity normally applies to “governmental functions” such as crime prevention, flood control, fire fighting, preservation of health, etc.

# PROPERTY ISSUES

## IV (C)

### Personal Property

#### Frequently Asked Questions

1. **Who is responsible to replace my personal property that was located on someone else's property (at leased property, rented out to a customer, etc.)**

Absent a lease provision to the contrary, the landlord would not be liable to the tenant (or the tenant's customers in a commercial context) for storm damage to the tenant's (or customers') personal property. The owner of the personal property bears the loss.

Insurance contracts frequently will produce a different result. The liability insurance carried by a car dealership, for instance, might well cover storm damage to third party vehicles that were in the shop waiting for repair when the storm hit.

In some situations, multiple insurance coverage might be available (in the example just given, the car dealership and the car owner may both have liability insurance that would apply).

2. **Who is responsible for the value of my personal property that was stolen (looted)?**

Generally, theft would be covered under most insurance policies. For homeowners, the specific property that might be covered, and the exclusions, would all be set forth in the homeowners' policy. For tenants (for instance a tenant that operates a shop that was looted) the landlord's insurance is not likely to respond, and as noted above, the landlord is not going to be legally responsible absent either a lease provision that places the loss on the landlord or some widely recognized common law theory unless there is a demonstrated failure of the landlord to provide adequate security.

3. **Is there any program available for me to recover the value of my lost personal property?**

Refer client to FEMA. Absent insurance, FEMA rules are going to apply.

# PROPERTY ISSUES

## IV (D)

### Insurance<sup>6</sup>

#### **Introduction**

Several Acts, and the regulations promulgated under their authority, are pertinent to insurance operations in Pennsylvania. The Insurance Company Law of 1921 and The Unfair Insurance Practices Act are examples of these authorities. Many statutes and regulations work together under these authorities to provide a framework for insurance operations within this Commonwealth.

For purposes of this discussion, relating to emergency insurance issues at the time of a natural or manmade disaster, a few bulleted points are provided:

- PA law does not require insurance companies to extend a grace period for premium payments beyond the due date. Thus, policy holders should be aware that the insurance company has authority to cancel a policy for non-payment of premium. Therefore, a policy holder must first be prudent and know their active status as an insured under the policy by making timely premium payment by the due date, or within the grace period if the carrier extends such a period.
- If a policy holder replaces an automobile or homeowner policy with another insurance company, not the incumbent carrier, that new company has 60 days to underwrite the application. Thus, a policy can be canceled within the first 60 days of inception for adverse information. Therefore, a policy holder must be aware of their active status as an insured under the policy in order for the policy to extend coverage.
- PA law does not permit a homeowners policy in force for more than 60 days from inception to be canceled solely for claim frequency. However, additional premium can be charged. A policy holder must be aware that additional premium could be charged, and must pay that additional premium timely to avoid potential cancellation of the coverage contract.

#### **Other pertinent information for a policy holder to know includes:**

- Flood damage is not covered by a homeowner's policy. To obtain flood insurance, contact the National Flood Insurance Program at 1-888-CALL-FLOOD.

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<sup>6</sup> ACBA Business Law Section Council

- There is usually a 30-day waiting period for flood insurance to go into effect.
- PA residents may obtain fire insurance through the Pennsylvania Fair Plan. A licensed insurance agent or broker could assist in securing this coverage.

**Pertinent information for policy holders and non-policy holders.**

- The PA Emergency Management Agency (PEMA) has a very informative website containing fact sheets on terrorism and natural disasters. [www.pema.state.pa.us](http://www.pema.state.pa.us).
- PEMA provides Individual Assistance to individuals, businesses, homeowners and renters as they recover from disasters. The Bureau of Recovery and Mitigation oversees the program.
- If an individual affected by a disaster suspects wrong doing by contractor or vendor, call the Bureau of Consumer Protection at the Attorney Generals Office.
- The PA Builders Association could also answer questions related to builders and contractors.

**Pertinent numbers and contact information:**

PA Insurance Department Consumer Line	1-877-881-6388
PA Insurance Department website	<a href="http://www.insurance.state.pa.us">www.insurance.state.pa.us</a>
National Flood Insurance Program	1-888-Call-flood
National Flood Insurance Program website	<a href="http://www.floodsmart.gov">www.floodsmart.gov</a>
PA Emergency Management Agency	<a href="http://www.pema.state.pa.us">www.pema.state.pa.us</a>
PA Emergency Management Agency Individual Assistance – Sharon Topper	(717) 651-2163 shtopper@state.pa.us
PA Office of Attorney General	1-800-441-2555
Attorney General Website	<a href="http://www.attorneygeneral.gov.pei.disaster/strikes.cfm">www.attorneygeneral.gov.pei.disaster/strikes.cfm</a>
PA Builders Association	1-800-692-7339
PA Builders Association website	<a href="http://www.pahomes.org">www.pahomes.org</a>

**Some Cautions For The Insured**

**1. Beware of “expeditors.”** Beware of anyone who claims that they are working on behalf of the government, the PA Insurance Department, or your insurance company and asks for money to help expedite your claim. Demand to see an official photo identification. Ask this person’s name and immediately report this to your insurance company or the PA Insurance Department for verification.

**2. Ensure proper credentials if utilizing “public adjusters.”** You may be approached by a "public adjuster" who will offer to assist you in handling or expediting your insurance claims in return for a percentage of your insurance benefit payments. Public adjusters are independent adjusters that provide service for a percentage of the claim settlement. Public adjusters often state that the fee is generally offset by the ability to obtain a better settlement than the insured would be able to obtain on your own. At least as relates to flood insurance, the PA Insurance Department website does not support the argument that public adjusters uniformly obtain better settlements. Public Adjusters do not fall within the scope of the Unfair Insurance Practices Act but rather under the Public Adjuster Law. The Public Adjuster Law provides for proper licensing of Public Adjusters that an insured should consider if contracting with such an adjuster.

**3. Be sure estimates for repairs are reasonable.** Most insurance companies will only reimburse for reasonable cost of repair. If prices quoted for repairs appear inflated, get another estimate and obtain your insurance company’s agreement before undertaking repairs. Remember that your claim will only be approved to the extent that it does not exceed your policy limit. If you undertake repairs at an inflated price, you may reach your maximum policy limit very quickly.

### **Frequently Asked Questions**

**1. How can I preserve my claims and protect my right to repayment from insurance coverage?**

If you have any insurance policy which you think may cover your damage, whether it is a homeowner’s, renter’s, or car insurance policy, call your agent, broker, or insurance company as soon as possible, and report your loss. Do this even if you are not sure that there is coverage or if you do not know if the claim will exceed the deductible. Many companies have also established websites and local emergency claims offices as part of the disaster response. Further, some companies may provide additional contact points through newspaper or radio advertisements. If you cannot get through to your insurance company by telephone, write them a letter telling them of your loss and keep a copy of it. If you cannot find the insurance policy, contact your agent, broker or insurance company. Ask for the entire policy, not just the cover page or declarations. If you cannot stay in your home, make sure you give the insurance agent or representative your new address and telephone number. Be sure to follow the instructions given to you by the claims personnel or agent.

**2. What if I live in a condominium?**

If you own a condominium, you should look at both the coverage provisions in your association insurance policy, and the coverage under your individual unit coverage owner’s insurance policy.

**3. How do I get an insurance adjuster out to my home to assess the damage?**

You should request the insurance company to send an adjuster to look at your property. It is best if this request is in writing. If necessary, you should contact the PA Insurance Department at 1-877-881-6388. However, this will not be done until public officials have declared it safe and have allowed such work to begin.

**4. What can I do to prepare for the insurance adjuster?**

If circumstances allow, make a list of all property damaged or destroyed, take pictures, collect names, addresses and telephone numbers of witnesses, obtain repair estimates, keep a record of expenses, such as alternative housing, etc., and locate original bills and receipts for lost items. If you do not have or cannot locate a complete household inventory, try to picture the contents of every room in your home and then list and describe all items that were damaged or destroyed. Include furniture, major appliances, electronic equipment, pictures or accessories in each room, as well as hobby items, tools, home maintenance items and seasonal items such as holiday decorations and outdoor furniture. As accurately as possible, try to remember when and where you bought each item, how much you paid and the cost of replacement. It is also helpful to include brand names and model numbers where known. Submit these along with your claim to the insurance company. Preparing a list prior to any disaster is obviously prudent. Templates for inventories are readily available on the PA Department of Insurance website. [www.ins.state.pa.us](http://www.ins.state.pa.us).

**5. What if I cannot wait for the insurance adjuster?**

Some insurance policies provide for reimbursement for temporary housing relocation costs while your home is being repaired and for car rental costs while your car is being repaired or replaced. Check your policy or call your insurance company or agent. If your situation is desperate, make sure that you let the insurance company know and, if the insurance company agrees that there is coverage, ask for an advance payment toward your losses. Due to the extreme amount of damage caused by a disaster, you should make all necessary temporary repairs, such as boarding up windows, patching holes in walls or roofs, or tarping the roof, as soon as possible even if you have not yet seen the insurance company representative. You can also move your personal property to protected areas and begin cleaning and drying items damaged by water. You should get the company's permission before doing so whenever possible. You should also not dispose of any items you believe may be a complete loss until the insurance company representative has examined them. Many companies will also give you an emergency advance to cover some repair costs. Take photos of the way things look before you begin cleaning and repairing and keep receipts for all clean up and repair expenses.

**6. Can I hire someone to make emergency repairs?**

Probably. Most homeowners' policies cover materials and reasonable labor expenses for temporary and emergency repairs in addition to any final repairs. You should get several estimates if possible. You should also ask the company representative whether the company will reimburse you for work you do yourself. Be sure to keep all the receipts.

**7. A contractor told me he could do the job faster if I just sign my insurance check over to him. Is that a good idea?**

No. If the repair work is extensive, the contractor may ask for periodic partial payments as the work progresses, but it is highly unlikely that a reputable contractor will request full payment in advance. The contract should specify that payments will be made as work is completed. If you have a mortgage on your home, the lending institution may also have specific requirements as to how the insurance funds are disbursed.

**8. What if the insurance company offers to settle?**

You should **consult a lawyer** before signing any release or waiver and before cashing any check from the insurance company which might be deemed full and final payment of your claim. Before you settle with the insurance company, be aware of the full extent of your damage and the full value of your claim. It may be important for you to get estimates or to actually have the work completed before you agree to a specific cost figure.

**9. What if the insurance company denies my claim or offers me less than I think I am entitled to receive?**

You should demand that the insurance company give you its reasons **in writing** for denying coverage or limiting your claim, and consult a lawyer. You should also ask for any reports prepared by the insurance company when examining the insured's property or evaluating the insured's claim. Most insurance policies require that you bring suit against the insurance company for failure to pay a claim **within one year** from the date of the occurrence of the damage. If you do not file suit in time, you may be prevented from receiving any reimbursement.

**10. Is the damage to my home covered under my insurance policy?**

Hazard insurance (homeowners' policies or other fire and extended coverage properties) from the private sector generally covers the damage to the home caused by the disaster, except for damage caused by flooding, which is generally specifically excluded. Victims should be asked whether they have separate flood insurance. **Review all applicable insurance policies.**



**11. What if my insurance does not cover all of the damages to my home or personal property?**

You may be eligible for benefits under the FEMA program if you are unable to pay for repair or replacement of essential parts of your home or essential personal property. See the FEMA section of this handout. You may also keep all of your repair and replacement receipts and file your losses with the IRS on your income tax returns next year. For information, you may call 1-(866)-562-5227.

**12. I know I have flood insurance. What do I do?**

Call your insurance company.

**13. Does my automobile insurance cover the damage to my car resulting from the disaster?**

Normally, this type of damage will be covered under the comprehensive policy coverage, although the particular language and exclusions of the policy will control. Even when there is a flood, wind, etc. exclusion, coverage may exist under a collision policy if the disaster and event causing the damage could be construed as a collision. The courts have reached mixed results on this issue.

**14. Where can I live while my house is being repaired?**

If your policy provides coverage for your loss, you will be insured for Additional Living Expense coverage which pays for the costs you incur in excess of your normal living expenses. For example, if you normally spend \$1500 for mortgage/rent, utilities, food, etc. and you now spend \$2000 due to the disaster, the insurance company will reimburse you \$500. Be sure to save all receipts. You should also ask the company representative if there are any restrictions on where and how long you can stay and how much you are allowed for hotel rooms. If you stay with a relative or friend, the company may reimburse your host for lodging only if you can show proof of actual payment. Extra expenses, such as higher utility bills by the host, would definitely be considered. You can also submit a claim for the cost of storing your personal property until your home is ready for occupancy.

**15. If a tree falls in my yard but does not damage my home or property, will insurance pay for clean up and removal?**

Generally, the fallen tree must cause damage to your home or property before the insurance company is obligated to pay for clean up and removal. However, the insurance company will pay for removal of a tree that is on your house, deck

furniture, or fence and some policies will pay for removal of trees that fall and block your driveway.

**16. If a neighbor's tree falls on my property and hits my home, should my neighbor's insurance pay?**

Generally, no. Unless negligence can be proven the neighbor's policy covers his/her house and your policy covers your house.

**17. Is food spoilage covered?**

Read the policy. While some policies cover food spoilage due to a natural disaster, others do not.

**18. I have insurance and filed a claim with my insurance agent, but I don't have a place to live. Is there any help for me?**

FEMA cannot duplicate assistance from your insurance company. If you still have serious unmet needs after receiving your insurance settlement, FEMA may be able to provide assistance. If you are unable to locate a place to rent you, can visit a local Disaster Recovery Center (DRC) or call FEMA's Helpline at 1-800-621-FEMA (3362) to get the list of rental resources in your area.

**19. I have received a settlement from my insurance company and it is not enough to cover my losses. What should I do now?**

FEMA recommends the following: Read over your settlement documents carefully and be sure you understand your policy. If you believe a mistake has been made, contact your insurance agent. If you are still not satisfied, your agent can tell you how to contest the settlement. Next, call FEMA at 1-800-621-FEMA. FEMA and other agencies may be able to help cover those losses that are uninsured and otherwise eligible.

**20. Are insurance deductibles covered under FEMA's programs?**

FEMA does not cover insurance deductibles. If your insurance settlement does not meet your disaster related need you may be eligible for assistance from FEMA.

**21. What documents does FEMA want from my insurance company?**

If you apply for help from FEMA because your insurance does not cover all of your disaster related needs, you need to write a letter to FEMA explaining your situation and include a copy of a settlement or denial letter from your insurance company. FEMA cannot duplicate any insurance coverage.

- 22. Do I have to file a claim with my insurance company since I have to pay a deductible? Why can't FEMA just help me?**

FEMA cannot give you money for items that your insurance covers (this would be considered a duplication of benefits), but FEMA may be able to help with uncompensated losses or unmet needs not covered by your insurance company. If you have not already contacted your insurance agent to file a claim, please do this as soon as possible. If you do not file a claim with your insurance company FEMA help may be limited.

- 23. My insurance company told me it would be weeks before they come to see my damages. Can FEMA help?**

If a decision on your insurance settlement has been delayed longer than 30 days from the time you filed the claim you may be eligible for an insurance advancement from FEMA. These funds are considered a loan and must be repaid to FEMA once you receive your settlement from your insurance company. FEMA will send you a Request for Advancement and Signature letter. You must complete and return this letter before FEMA can evaluate your request for assistance.

- 24. Can I obtain immediate financial assistance from my homeowners insurance company to pay for alternative living arrangements while I am displaced from my damaged or destroyed home?**

You may be entitled to additional living expenses (ALE) under your homeowner's policy. Ask your insurance company if you are entitled to these benefits under your policy. Also ask your insurance company for a copy of your insurance policy so that you can confirm whether the benefits are available to you.

- 25. Do I have to pay my insurance premiums (for example, on my house or car) in light of disaster damage?**

Yes, you generally must continue to pay your insurance premiums when due. However, some insurers may grant extensions on payment deadlines. Contact your insurance company or state department of insurance to determine if there are any premium payment extensions that apply to you.

- 26. If my business maintained vehicles which were damaged as a result of the disaster, is there coverage under my commercial auto policy?**

The coverage depends upon the cause of the loss and upon whether you purchased Comprehensive Coverage, Specified Causes of Loss Coverage, or Collision Coverage. Specified Causes of Loss Coverage typically covers damage caused by fire, theft, windstorm, flood, mischief or vandalism. Comprehensive Coverage

typically covers any cause of loss except collision or overturns. If you purchased only Collision Coverage, then there likely is no coverage.

**27. My business property was damaged due to winds/storm surge/flood/collapse during the disaster. Is there coverage under my commercial property policy for damage to the structure and for lost or damaged contents?**

The typical commercial property policy will pay for direct physical loss or damage to covered property, including business personal property located in or on the premises, resulting from a covered cause of loss. However, such policies may contain exclusions for flood (including surface water, waves, tides, tidal waves, overflow of any body of water, whether driven by wind or not) or collapse. You will need to refer to your policy to determine if there are exclusions that apply. If your policy provides coverage, it may also pay for the expense to remove debris of covered property.

**28. Am I entitled to replacement cost for covered property under my business's commercial property policy?**

The policy typically will allow actual cash value, which takes into consideration depreciation of the property. However, you may have purchased an endorsement which provides coverage on a replacement cost basis.

**29. Is there insurance coverage for lost business as a result of the disaster?**

If you have Business Interruption and Extra Expense coverage, you may be entitled to recover the net profits and fixed charges and expenses you fail to earn because of business interruption resulting from an accident. You may also be entitled to recover the extra expense of operating your business from the day of the accident until normal operations are restored.

# INDIVIDUAL NEEDS V (A)

## Medical and Mental Health Issues<sup>7</sup>

### Introduction

The Commonwealth of Pennsylvania has a variety of resources available for individuals and families to obtain medical care which are listed below. These programs are not only available in the event of a disaster, but also for those having difficulty affording medical care due to situations unrelated to a disaster. Certain requirements for obtaining government benefits, such as proof of income or social security number, could possibly be waived depending on the nature and severity of a particular disaster. In addition, the following organizations may be able to provide various types of assistance following a disaster:

American Red Cross – 412-263-3100 or 888-217-9599  
The Salvation Army – 412-922-4808.

### Frequently Asked Questions

**1. I need medical help. How can I get it?**

If you have an urgent medical condition, call 911 or go to the nearest emergency room.

**2. What if I don't have health insurance? Can I still get medical help?**

You and your family may be able to qualify for publicly funded health programs. Pennsylvania offers Medicaid for low-income families. AdultBasic provides health insurance for individuals and families who do not qualify for Medicaid. The Children's Health Insurance Program (CHIP) provides free or low-cost health care coverage for children. You can apply for Medicaid, AdultBasic and CHIP at [www.compass.state.pa.us](http://www.compass.state.pa.us). You may also obtain information regarding Medicaid and have an application sent to you by calling 1-800-842-2020. To obtain information and apply for CHIP by telephone, call 1-800-986-5437. To obtain information and apply for AdultBasic, call 1-800-462-2742.

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<sup>7</sup> ACBA Health Law Section Council

**3. I'm enrolled in Medicaid, or my child is enrolled in CHIP, but we had to leave our home state. Can we use our Medicaid or CHIP in another state?**

Services provided outside Pennsylvania may or may not be covered. For Medicaid, out-of-state medical providers must enroll with Pennsylvania's Medicaid to receive reimbursement and should call 717-772-6456 to obtain an enrollment application.

For CHIP enrollees who need out-of-state care, you should contact your current CHIP Health Maintenance Organization to obtain authorization.

**4. I'm enrolled in Medicaid, or my child is enrolled in CHIP, but we lost our cards in the disaster and I don't know the numbers or our social security numbers. Can we still get medical care through Medicaid or CHIP?**

Yes. For Medicaid, call or go to your County Assistance Office to receive a replacement card. For CHIP, contact the Health Maintenance Organization that you selected to provide your benefits for CHIP.

**5. Who can qualify for the Medicaid and CHIP programs?**

Medicaid eligibility is based on income and household resources. The general categories of persons who may be eligible for Medicaid include individuals who are blind, disabled or over 65; families with children under 21; individuals with a temporary disability, aged 59 through 64, limited income or special circumstances, including current drug or alcohol treatment, victim of domestic violence or caring for a child or disabled person.

For CHIP, a child under age 19 living in Pennsylvania who is a US citizen, permanent legal alien or refugee as determined by the Immigration and Naturalization Service is eligible if the family income is within the eligibility guidelines. Currently, a family of four can make up to \$47,000 and still qualify for CHIP.

**6. Will my child be able to get emergency medical care if I cannot be reached by telephone?**

Yes. In Pennsylvania, a physician may provide medical treatment to a child if the physician believes that an attempt to secure consent from the parent or legal guardian would cause a delay in treatment that would increase the risk to the child's life or health.

**7. My child is living with a relative. Will my child be able to get medical care if I cannot be reached by telephone?**

You can sign an authorization that would permit the person taking care of your child to consent to medical treatment for your child.

**8. I have a child in my home who was placed by the Department of Social Services. What will happen during an emergency if the child requires medical care?**

You should contact the Agency that placed the child in your home for specific instructions as to how the child is to receive medical care during an emergency.

**9. I evacuated from the disaster and have no means of paying for my prescription medications. What can I do?**

For Medicaid, contact your County Assistance Office to determine if you are eligible for prescription drug coverage through Medicaid. For CHIP and AdultBasic, contact your Health Maintenance Organization to see if this benefit is available.

**10. Is it possible to do something about violence in our home?**

A natural disaster causes a great deal of stress on everyone. This can lead to increased tension and violence in family and household units. Domestic violence is a crime. You should contact the National Domestic Violence Hotline at 1-800-799-7233 or the Pennsylvania Coalition Against Domestic Violence at 1-800-932-4632 to get help.

**11. How can I get counseling for my family or myself?**

Mental health services are coordinated in Pennsylvania through the county Mental Health/Mental Retardation program offices. The county Mental Health office can assess an individual's need for treatment, determine eligibility and make a referral for treatment. The Allegheny County Mental Health/Mental Retardation office can be reached at 412-350-5701.

# INDIVIDUAL NEEDS V (B)

## Social Security Benefit Issues<sup>8</sup>

### **Introduction**

Social Security is composed of two separate entities: The "Old Age and Survivors" program and the "Disability" program. Each program is financed differently. "Supplemental Security Income" is a program which provides benefits for aged, blind, and disabled people without regard to prior workforce participation. It is administered by the Social Security Administration, but is not funded by Social Security taxes.

### **Ongoing Monthly Payments**

In the event of a disaster, the Social Security Administration will undertake efforts to ensure that all Social Security Benefit Checks are received by any affected beneficiaries. Information on how to help a victim receive his or her social security benefits payment will be attached as an appendix in the event of a disaster.

#### **(a) For Paper Checks**

If the United States Postal Service (USPS) suspends mail service in some areas damaged by a disaster, the suspended locations will be listed when a disaster is declared. To help prevent identity fraud, USPS may ask you for a photo ID when someone attempts to pick up mail. If you are not able to go to a temporary mail delivery station, you can go to any open Social Security office and request an "Immediate Payment."

#### **(b) For Direct Deposit**

If you receive your Social Security payment by direct deposit, your Social Security payment should be deposited to your account as usual. However, if you experience any difficulty getting your payment, you can go to any open Social Security office and request an "Immediate Payment."

#### **(c) Social Security Offices**

For information on SSA offices, see [www.socialsecurity.gov/otherssasites/](http://www.socialsecurity.gov/otherssasites/). For more information on the nearest open Social Security office, you can call 1-800-772-1213 (TTY 1-800-325-0778).

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<sup>8</sup> Neighborhood Legal Services Association and comments from the Elder Law Committee



## **Survivor Benefits When Family Members Have Died**

When a worker dies, certain family members may be eligible for Social Security survivor's benefits if the worker had enough Social Security earnings credits. Any worker with more than 40 earnings credits (10 years of work) is fully insured for their survivors to receive benefits. Social Security survivor's benefits can be paid to:

- A widow/widower-full benefits at 65 years of age, or reduced benefits as early as age 60. A disabled widow/widower may receive benefits as early as age 50.
- A widow/widower at any age, if he or she takes care of the deceased's child.
- The child must be either under age 16 or disabled and receiving Social Security benefits.
- Unmarried children under 18, or up to age 19 if they are attending elementary or secondary school full time. Note: A child can receive benefits at any age if he or she was disabled before age 22 and remains disabled. Under certain circumstances, benefits can also be paid to stepchildren, grandchildren, or adopted children.
- Dependent parents at 62 or older.
- A former spouse can receive benefits under the same circumstances as a widow/widower if the marriage lasted 10 years or more.
- Please note that in general, a widow/widower cannot receive benefits if they remarry before the age of 60 (50 if disabled) unless the latter marriage ends, whether by death, divorce, or annulment. However, remarriage after age 60 (50 if disabled) will not prevent payments on a former spouse's record.

## **Survivors Benefits For Parents**

A parent of a deceased worker is entitled to survivor's benefits if all of the following requirements are met:

- The deceased worker had worked at least 40 quarters (10 years) at the time of death; and,
- The parent of the deceased worker is 62 or older; and,
- The parent is not entitled to other Social Security benefits equal to or larger than the amount of the survivors benefits; and,
- The parent was receiving at least one-half support from the deceased worker; and,

- The parent has not remarried since the worker died; and,
- The parent is either a natural parent or legally adopted the deceased worker before he/she turned 16; or the parent became the deceased worker's stepparent before the deceased worker turned 16.

### **Amount Of Benefits**

The amount of the survivor's benefit is based on the earnings of the person who died. The more the worker paid into Social Security, the higher the benefits will be. The amount a survivor receives is a percentage of the deceased's basic Social Security benefit. However, benefits may be lower if the family maximum, which limits the total amount that can be drawn on one worker's account each month, is reached. The following provides the most typical situations:

- Widow or widower full retirement age or older- 100 percent.
- Widow or widower age 60 to 64-about 71 – 94 percent.
- Widow or widower at any age with a child under age 16 – 75 percent.
- Children – 75 percent.

To file for benefits, you should call 1-800-772-1213 and ask for an appointment. A person can qualify for widow's or widower's benefits if he or she was married to the deceased worker for at least nine months just before the worker died. (A surviving divorced spouse must have been married to the worker for 10 years immediately before the date the final divorce became effective.) If the insured worker's death was caused by the disaster, the 9-month requirement is likely to be waived.

### **Social Security Death Benefit**

A lump-sum death benefit of \$255 may be paid upon the death of a person who has worked long enough to be insured under the Social Security program. A worker is insured if she has at least 40 earnings credits (10 years of work). The lump-sum death benefit can be paid upon the death of the insured person even if they were not receiving retirement or disability benefits at the time of death.

This payment goes to a spouse who was living with the worker at the time of death, or to a spouse who, in the month of death, is eligible for certain Social Security benefits based on the worker's record. Surviving children can only receive a death benefit if no spouse is entitled to the benefit and in the month of death and the child is eligible for a Social Security benefit based on the worker's record. If no spouse or child meeting these requirements exists, then the lump sum death payment will not be paid.

The lump sum death payment can no longer be paid to funeral homes for funeral expenses.

To file for the benefit, call 1-800-772-1213 and request an appointment.

### **Supplemental Security Income (SSI)**

The SSI program provides monthly income to people who are age 65 or older, or are blind or disabled, and have limited income and financial resources. Effective January 2006 the SSI payment for an eligible individual is \$603 per month and \$904 per month for an eligible couple for most states. If you are married, and only one person is eligible, your benefits may be less if a portion of your spouse's income is counted against you. In addition, your financial resources (savings and assets you own) cannot be more than \$2,000 (\$3,000 if married). Note that any benefits from FEMA should not count towards this resource limit. You can be eligible for SSI even if you have never worked in employment covered under Social Security.

Generally, to be eligible for SSI, an individual also must be a resident of the United States and must be a citizen or a person lawfully admitted for permanent residence. Other non-citizens can only get SSI under certain circumstances.

A person can start an application by calling the Social Security Administration's toll free telephone number 1-800-772-1213. Once Social Security has all the necessary documentation, such as proof of age and medical evidence of disability, it will send a written decision. If an applicant wants to appeal, she must ask for a hearing before an Administrative Law Judge within 60 days of the date of the initial decision. At this point she should obtain legal advice and/or representation from Neighborhood Legal Services or the private bar.

For disability applications, the process can stretch out over a couple of years. Destitute applicants should be referred to the welfare office for cash aid and/or Food Stamps while the application is pending. There is also a process whereby the hearing on the claim can be expedited. One must show "dire" circumstances such as homelessness, etc. Forms are available at the Pittsburgh Office of Hearings and Appeals.

### **SSI Emergency Advance Payments**

SSI applicants who appear to be eligible for SSI and who are having a financial emergency can get an advance payment to help them get through the emergency. This expedited procedure is called Emergency Advance Payments (EAP). It is available for applicants who have been found eligible but for whom the paperwork is not yet complete or who are very likely to be eligible for SSI. SSI Emergency Advance Payments (EAP) are only available to SSI applicants, not to recipients.

The applicant may also be eligible for other kinds of Social Security or SSI benefits, on his/her account, or on the account of another if they want to retire, or they are an aged or disabled widow or widower, or are the dependent family member of a disabled, retired, or deceased worker. If you think your client is eligible for any of these benefits, you should contact the Social Security Administration and apply.

Numerous Questions can be asked by going to the Social Security website at [www.socialsecurity.gov](http://www.socialsecurity.gov) where you can click on “search” and then “questions”. There is also a free, online confidential tool to help individuals find governmental benefits for which they might be eligible. See [www.govbenefits.gov](http://www.govbenefits.gov).

# INDIVIDUAL NEEDS V (C)

## **Public Benefits**<sup>9</sup>

### **Introduction**

The Commonwealth of Pennsylvania offers a variety of public benefits which can be helpful in times of a natural or manmade disaster. Cash assistance and food assistance will in all likelihood be the most needed in a time of crisis.

NOTE: FEMA and other disaster benefits should not count as income or resources in any means-tested programs. Federal, state, local and private disaster benefits should not be counted as a resource or income against any federally funded assistance program such as SSI, FITAP (TANF), Medicaid, and Food Stamps. (42 U.S.C. §5155(d)). The \$2,000 payment from FEMA should **not** disqualify anyone from these programs.

### **Cash Aid for Needy Families - Temporary Assistance to Needy Families (TANF)**

Pennsylvania's cash assistance program for children and their parents, or other relatives with whom they live, and pregnant women is called Temporary Assistance for Needy Families (TANF). This program, along with the Food Stamp program, is administered by the Pennsylvania Department of Public Welfare (DPW).

To apply in Allegheny County and find the office nearest you, call 412-565-2146. You may also apply online at [www.compass.state.pa.us](http://www.compass.state.pa.us). The hotline number for Pennsylvania is 1-800-692-7462 or 1-800-451-5886 (TDD). There may be work requirements for households with minor child(ren) and the grants generally discontinue after 5 years.

The TANF cash grants range from \$205 for one person to \$670 for a family of 6 and can be found at [www.dpw.state.pa.us](http://www.dpw.state.pa.us). Pennsylvania will consider the family or household of the individual applying for aid to consist of the people living together right now, regardless of living arrangements prior to the disaster.

### **General Assistance Program (GA)**

GA is a state funded program for households with no child(ren) who have temporary or permanent disabilities or medical or social circumstances that prevent employment. It is provided only to households that do not meet the requirements for TANF. There are no time limits on GA unless you are undergoing active treatment for

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<sup>9</sup> ACBA Public Service Committee

substance abuse or you are the victim of domestic violence in which case there is a 9 month lifetime limit.

The cash grants are \$205.00 per month for one person and \$316.00 for two persons. A caretaker/non-relative can receive TANF and GA assistance for an eligible household.

### **Electronic Benefits (EBT)**

A family receiving TANF, GA, and/or Food Stamps will receive both cash and food stamp benefits on an Electronic Benefits (EBT) card. People who were receiving benefits before the disaster should be able to access their benefits at ATMs or Point of Service Devices (POS) in stores. They should be able to use their cash aid and Food Stamps in other states due to a temporary absence. However, cash access will depend on the compatibility of the EBT cards with ATMs and POSs in out of state locations. Recipients are able to use their PA EBT cards through MAC and Quest networks. People encountering problems using their EBT card should check the banking symbols on the backs of their cards and/or call their local county assistance office or the Pennsylvania DPW number at 1-800-692-7462.

### **Lost EBT Cards**

People who get benefits but have lost their EBT cards, can go to any DPW office and request a new EBT card. Picture I.D. is NOT required. They need to provide their name, Social Security Numbers, and date of birth. Lost cards can be replaced within 48 hours. You may call 1-888-EBT-PENN (1-888-328-7366) where you will be asked to enter your card number. If you do not have it, follow the prompts. The recipient hotline is open 24 hours, 7 days a week.

### **Disaster Food Stamps (7 U.S.C. §2014(h)(3))**

Where a federal disaster has occurred, the DPW may request a waiver from the Federal Food and Nutrition Service (FNS) which would allow either full Disaster Food Stamps (DFS) or a Modified Food Stamp Program (MFSP). The level of the estimated need determines which program Pennsylvania will request. Everything is based on the Robert T. Stafford Disaster Relief and Emergency Act of 1988 which directs the establishment of temporary emergency standards of eligibility for households who are victims of a disaster and provides for emergency allotments to eligible households to replace food destroyed in a disaster.

For individuals already getting Food Stamps, an extra month of benefits may be added to their account on their EBT card. Households may also be eligible for supplemental benefits representing the difference between the maximum allotment for a particular household size and the monthly allotment already received by the household in the month of the disaster. Disaster Food Stamps may also be made available to people not

receiving regular Food Stamps. Disaster victims may be eligible even if they are over the usual income or resource limits (e.g. have too many cars, too much in their bank accounts, etc). People who may be able to get Disaster Food Stamps include those who have:

- had damage to their homes from the disaster or its aftermath
- lost a job
- lost income/wages
- have no access to their bank accounts

The extent of potential benefits will not be determinable until the estimated need is established by DPW in negotiations with the FNS.

### **Replacement Food Stamps**

If any individuals in the state used stamps, rather than an EBT card, they may be able to get them replaced. (7 U.S.C. §2014(h)(3); 7 CFR §280.1). This is most likely not an issue since people now use electronic benefits cards (see EBT Section above). Individuals who report a loss of food may request replacement benefits for the amount of the loss but this amount may not exceed their normal monthly benefit amount. Individuals seeking replacement benefits are required to sign an affidavit attesting to the reason for the loss.

#### ***Advocacy Tips:***

- 1) Work with local food banks and USDA to make sure the word gets out that this help is available.
- 2) If necessary, ask for an extension of the application deadline.
- 3) Ask FEMA to translate and disseminate disaster food stamp flyers in all relevant languages.
- 4) Find out who is on the food stamp disaster task force (7 U.S.C. §2017(h)(2)) in your state and let them know what your clients need.

### **New Expedited Food Stamp Applicants**

Individuals who have lost their jobs, homes, or income, or whose housing costs exceed their income, might want to apply for regular Food Stamps even if they were not eligible for or receiving Food Stamps prior to the disaster. These applicants should get expedited help which should be available within five calendar days of application (called expedited Food Stamps). If Disaster Food Stamps have not been authorized, victims can still apply for regular Food Stamps. Special rules, which are more generous, may be used for them as well.

## To Apply For Disaster Or Regular Food Stamps

Go to a local DPW office or apply online at [www.compass.state.pa.us](http://www.compass.state.pa.us). Picture I.D. is NOT required. If you can, you may have a friend, relative, or minister verify your identity (called a collateral contact). In declared disasters, applicants should be able to simply tell welfare who they are and where they live. This is called self-certification. No additional proof should be needed in a time of crisis.

## WIC

WIC is the Special Supplemental Nutrition Program for Women, Infants, and Children. It is a 100% federally funded program that provides nutritious food (via vouchers), individual counseling, breastfeeding promotion and support, and referrals to health care. These benefits are available to high-risk, low-income (up to 185% of poverty) pregnant or postpartum women, women who are breastfeeding, and children up to the age of five. The purpose of the WIC Program is to prevent poor birth outcomes, such as infant mortality and low birth weight, and to improve the nutrition and health of infants and their mothers.

The Pennsylvania Department of Health toll free number for the WIC program is 1-800-WIC-WINS (1-800-942-9467) or visit them on-line at [www.pawic.com](http://www.pawic.com).

In Allegheny County, you may call 412-350-5801 or visit them on-line at [www.achd.net/wic](http://www.achd.net/wic).

WIC is provided in addition to Food Stamps and other food programs. The following individuals may also qualify for WIC coupons to purchase certain nutritious foods:

- pregnant women,
- women who have had a baby in the last 60 days,
- women who are breastfeeding,
- and children under age six years.

For certain newborns and infants, special medical formulas are also provided by WIC. These formulas are usually distributed by pharmacies or clinics. To get paid by WIC for special infant formulas, the clinic will need to get information from a medical professional, such as a nurse or doctor, showing the infant's medical need for the formula. If the need is urgent, this medical proof can be given over the phone by a nurse or doctor or other medical professional located anywhere in the U.S., but they will have to follow up with written documentation by letter or fax within two weeks in order for the pharmacist or clinic distributing the formula to be paid by WIC. The same documentation rules apply for special medical foods for women or older children.



## Frequently Asked Questions

### 1. Can I use WIC in another state?

Yes, but you will have to re-apply if you have lost your WIC vouchers. If you still have your vouchers, you should be able to use them with any provider who participates in the WIC program anywhere in the U.S. You should also be able to pick up your voucher and/or exchange them out of state. There is a listing of all state WIC toll free numbers at [www.fns.usda.gov/bic](http://www.fns.usda.gov/bic) under How to Apply. To continue using WIC after that time, you will need to re-apply.

### 2. I have lost all of my papers and I don't have any identification or other kinds of proof for myself or my children: can I still get WIC?

Yes, although when you apply for WIC you will have to sign a statement explaining why you have no proof of identity or of state residence. If you have any income at all, you'll also have to sign a statement about your source and amount of income when you apply for WIC.

# INDIVIDUAL NEEDS V (D)

## Immigration Issues

### **Introduction**

Lawful permanent residents of the United States at the time of a disaster may be eligible for short-term, non-cash, in-kind emergency disaster relief. Some “qualified aliens” may also receive benefits. It is not necessary to disclose immigration status for Immigration Benefits. The receipt of disaster relief does not have public charge consequences.

Volunteer attorneys should check the following link before giving legal advice: <http://www.nilc.org/disasterassistance>, as well as immigration issues in Pennsylvania at Title 24 of Pennsylvania Statutes.

### **Disaster Relief**

All immigrants, regardless of status, are eligible for short-term, non-cash, in-kind, emergency disaster relief. Other ongoing disaster assistance programs are available to categories of eligible immigrants and citizens. Additional information is available at: <http://www.nilc.org/immspbs/misc/index.htm#disasterassist>

### **USCIS Offices**

Immigrants may seek assistance at any United States Citizenship and Immigration Services Office (USCIS), formerly the Immigration & Naturalization Service (INS). The USCIS Office is located at:

US Citizenship and Immigration Services  
3000 Sidney Street  
Pittsburgh, PA 15203

Other offices in the region are located at:

Philadelphia District Office  
1600 Callowhill Street  
Philadelphia, PA 19130

Charleston, WV District Office  
210 Kanawha Boulevard  
West Charleston, WV 25302

All USCIS field officers are prepared to assist disaster victims and work to replace all documentation. Immigration officers will verify the identity and immigration status of all customers before re-issuing any immigration-related documents.

Immigrants with criminal record problems or immigration-related violations should contact non-profit immigration advocacy agencies before contacting (USCIS). Such agencies can be found by contacting the National Immigration Law Center at: <http://www.nilc.org>.

For up-to-date information on USCIS operations in the wake of disaster, please visit: <http://uscis.gov/graphics/katrina.htm> or call the National Customer Service Center at 1-800-375-5283.

### **Immigrants in Court Proceedings**

An immigrant can also get recorded information about their individual court case by calling 1-800-898-7180 and entering their Alien Registration number, commonly known as their "A" number.

### **Frequently Asked Questions**

**1. Do I need to be a U.S. resident or citizen to apply for emergency disaster relief?**

All immigrants, regardless of status are eligible for short-term, non-cash, in-kind, emergency disaster relief. Other ongoing disaster assistance programs are available to categories of eligible immigrants and citizens.

**2. Will I be considered a public charge and denied residency if I apply for emergency disaster relief?**

No. Acceptance of emergency disaster relief will not be considered public cash assistance preventing you from becoming a resident.

**3. How can I get a replacement green card or work permit?**

For a replacement green card you need to fill out immigration form I-90 and file as directed by the USCIS web site. Please visit <http://www.uscis.gov/files/form/i-90instr.pdf> for up to date filing information. You can obtain the immigration form by calling 1-800-870-3676.

For a replacement work permit you need to fill out immigration form I-765. If you have a copy of your lost work permit attach it to I-765. Also attach a photocopy of any applications or documents which entitle you to receive a work permit, such as application for asylum, suspension of deportation, or adjustment of status.

**4. Do I need to let the INS or immigration court know if I have moved as a result of the disaster?**

If you have a pending case, you are required to inform the immigration court of any change of address or telephone within 5 days of moving. More information about immigration matters may be obtained online at [www.USCIS.gov](http://www.USCIS.gov).

# EMPLOYMENT CONCERNS

## VI (A)

### Labor and Employment

#### Introduction

In the event of a disaster, employees may be displaced from their jobs, either temporarily or permanently. This section discusses applicable state and federal law in connection with some of the issues that are likely to arise in such situations. In assessing the legal rights and obligations of employers and employees, however, inquiry should also be made as to any contractual rights arising from individual or collectively bargained employment agreements.

#### Frequently Asked Questions

- 1. What is an employer's obligation in regard to providing notice when employees are being terminated or laid off due to a disaster?**

The answer to this question depends on the size of the employer and the total number of employees affected. Employers with 100 full-time employees or full-time employee equivalents are governed by the WARN Act which requires that certain notices be provided to employees, employee representatives and governmental units 60 days in advance of plant shutdowns or mass layoffs affecting 50 employees or more. If the employer has less than 100 employees, the WARN Act does not apply and the employer is free to terminate its employees without notice. The employer is also not required to give notice if a layoff or plant closing is the direct result of a natural disaster (i.e., hurricane, flood, earthquake, tornado, storm, drought, or similar effect of nature). The WARN Act is quite complex, and the Department of Labor regulations need to be consulted if there is a possibility that WARN applies. These regulations are set out at 20 CFR Part 639 and are available on the U.S. Department of Labor web site, [www.dol.gov](http://www.dol.gov).

- 2. What is an employer's obligation with respect to group health plan?**

An employer may choose to continue its health benefit program in the aftermath of a disaster. In such a case the employer will need to make arrangements with employees for payment of any applicable employee contributions. The termination of an employment or reduction in hours of work could also trigger the elimination of group health insurance coverage for covered employees and dependents. This would obligate the employer to send notices to the affected employees advising them of their right to continued health plan coverage pursuant to a federal statute commonly known as "COBRA." In the usual case, COBRA permits the ex-employee to continue the same coverage the employee had while

employed for up to 18 months. The ex-employee is responsible for 102% of the premium for the coverage. If the employer terminates its health plan completely, COBRA coverage will end. For more information, consult the U.S. Department of Labor website ([www.dol.gov/ebsa](http://www.dol.gov/ebsa)).

**3. What can employers do regarding payment of exempt employees' salaries?**

An option to employers would be to place exempt employees on administrative leave status while the business regroups. This would relieve the employer of the obligation to pay salaries.

**4. Does Pennsylvania have any legal restrictions against firing, suspending or disciplining employees?**

Pennsylvania is an employment-at-will state. Generally, this means that an employer may end the employment relationship at any time and for any reason - good or bad - or for no reason at all.

However, an employer may not discriminate against any employee by taking an adverse employment action on the basis of the employee's race, sex, age, religion, color, national origin, or disability. The City of Pittsburgh and some other Pennsylvania municipalities also prohibit discrimination on the basis of sexual orientation.

**5. Are there exceptions to Pennsylvania's employment-at-will doctrine?**

Yes, an exception to an employer's right to terminate employment at-will exists where the termination would violate a significant public policy. This exception to at-will employment is sometimes called wrongful termination. Pennsylvania courts have given the public policy exception to employment at-will a very narrow construction. The courts are hesitant to apply this exception and have done so only in limited situations, such as where employers have fired employees who refused to violate the law, filed claims for workers' or unemployment compensation benefits, missed work to attend jury duty, or refused to take a polygraph test.

**6. When should final paychecks be issued?**

Upon separation of employment, wages earned prior to separation become due and payable on the next regular payday on which such wages would otherwise be due and payable. If requested by the employee, payment must be made by certified mail. 43 Pa. C.S. §260.5. In the event of a dispute over the amount due, the employer must pay the undisputed amount without condition within the time limits specified. 43 Pa. C.S. §260.6.

Any employee, group of employees, labor or organization or party to whom any type of wages are payable may bring a civil action to recover the amount due. 43 Pa. C.S. §260.9a(a). The Secretary of Labor and Industry also has the right to investigate and institute a civil action on behalf of aggrieved employees. 43 Pa. C.S. §260.8. Wages include vacation and other fringe benefits accrued and owing to the employee by virtue of the employer's policy or an employment contract. Note that the law does not itself create substantive rights to payment of accrued vacation or other benefits upon termination, but simply provides a statutory remedy for failure to pay promised benefits.

**7. How should last wages be paid to a deceased employee?**

Under certain circumstances, Pennsylvania law allows employers to pay to the surviving spouse or children of a deceased employee (or to the employee's estate) the last wages and other benefits due the deceased employee without a court order. 20 Pa. C.S. §3101.

# **EMPLOYMENT CONCERNS**

## **VI (B)**

### **Unemployment Compensation**

#### **Introduction**

Unemployment Compensation (UC) protects workers against job loss by providing temporary income support to people who become unemployed through no fault of their own. UC benefits are paid, for a limited time, to individuals who are able and available for suitable work, and are actively seeking new employment. To qualify for UC benefits, a worker must have performed services covered under the Pennsylvania UC Law (Law) and must have worked for an employer who is required by Law or elects to pay into the UC Fund.

The Department of Labor & Industry is responsible for administering the UC program. The Office of UC Benefits (OUCB) administers the benefit portion of the program. A statewide system of Service Centers is maintained which take and process claims for benefits.

#### **Frequently Asked Questions**

##### **1. What is unemployment compensation?**

Unemployment compensation (UC) is a program designed to provide temporary financial assistance to workers who are unemployed through no fault of their own and who meet the requirements of Pennsylvania's Unemployment Compensation statute. UC benefits are calculated based upon past employment and legal entitlement, and not on the basis of need.

##### **2. How do I qualify for unemployment compensation benefits?**

Any individual who has become unemployed may file an application for UC benefits. Eligibility to receive those benefits will be dependent on whether the worker meets the various requirements specified in the Pennsylvania UC Law. To be covered by the UC Program, a worker must have worked for an employer who is required by Law or elects to pay into the UC Fund and have covered employment.

A worker may be eligible to receive benefits if the worker:

- is unemployed through no fault of the worker;
- has filed an initial application for UC benefits;



- is unemployed for a waiting period of one week (waiting week) after filing a benefit claim;
- has performed services covered (or elected for coverage) under the UC Law;
- has earned enough wages to qualify;
- has sufficient credit weeks to qualify;
- is able to work and is available for suitable work; and
- is registered for work with PA CareerLink Services.

**3. How do I file for unemployment compensation benefits?**

The best way to file a new claim for UC benefits is online ([www.dli.state.pa.us](http://www.dli.state.pa.us) and use the Quick Link to “Unemployment Compensation.”) 24 hours a day, seven days a week. Computer access and assistance is available at PA CareerLink® offices statewide. Find the office closest to you at [www.pacareerlink.state.pa.us](http://www.pacareerlink.state.pa.us).

You may also file by calling the statewide UC Service Center toll-free number at 1-888-313-7284 (TTY services for the deaf and hard of hearing: 1-888-334-4046) between 7 a.m. and 8:30 p.m. Monday through Friday, and 7 a.m. to 2:30 p.m. Sunday. The best times to call are later in the day and later in the week. If your Social Security number ends in an even number, call on Sunday, Tuesday or Thursday. If it ends in an odd number, call on Monday, Wednesday or Friday. You may also file by mail. Forms can be obtained online, at PA CareerLink offices and state legislators' offices.

To file an application for benefits, a worker will be asked to provide:

- social security number
- PA Department of Transportation photo ID
- alien registration number (for non-United States citizens)
- the name and address of last employer (full or part-time)
- most recent pay stub

<b>If the Worker...</b>	<b>The Worker will need...</b>
Worked in another state in the last 18 months	All employer names and mailing addresses
Worked for the Federal Government in the last 18 months	Information from Standard Form 8, Standard Form 50, W-2's and/or pay stubs
Was in the military in the last 18 months	DD 214, Member Copy 4
Is covered under a TAA or NAFTA-TAA Certification	The TA-W or NAFTA-TAA petition number

**4. How should I file if I worked in another state or more than one state?**

If a worker has wages in another state, the worker may be able to establish a claim against that state after the maximum entitlement to Pennsylvania UC benefits has been exhausted.

**5. What are the minimum and maximum amounts of Unemployment benefits?**

The minimum weekly benefit amount of UC in Pennsylvania is \$35.00. Your weekly benefit amount will depend upon the total amount of wages paid to you during your base period. The total amount of weekly UC benefits payable to you would be equal to a benefit amount set forth in the statute, or 50% of your fulltime weekly wage, whichever is greater.

All UC claimants have the choice of receiving their payments via debit card or direct deposit. A debit card will be mailed to you after you have been determined financially eligible for benefits, unless you have submitted a direct deposit form within the last two years.

**6. Are UC benefits taxable?**

Unemployment benefits are considered gross income on your federal income tax return. You may choose to have Federal Income Tax withheld from your UC benefit payments at the rate of 10 percent of your weekly benefit rate plus the allowance for dependents (if any). You do not have to pay state income tax on unemployment benefits.

By the end of January of each year, the Department mails Form UC-1099G, Statement for Recipients of PA Unemployment Compensation Payments, to individuals who were paid UC benefits during the prior year. This statement shows the amount of UC benefits paid and the amount of federal income tax withheld, if any. The statement will be mailed to your address of record. (The U.S. Postal Service will forward Form UC-1099G if it has a forwarding address on file.)

**7. What is Disaster Unemployment Assistance, or DUA?**

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

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

**8. Can I recover disaster unemployment benefits or assistance?**

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

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

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

## **9. Who Qualifies for Disaster Unemployment Assistance?**

You may qualify for DUA if you are an unemployed worker or an unemployed self-employed individual and you do not qualify for UI entitlement if, *as a direct result of the major disaster*, you:

- Performed no work and earned no wages in employment or self-employment,
- Have less than full-time work/wages,
- Are unable to reach your place of employment or self-employment,
- Were scheduled to start work or self-employment and now do not have a job, or place of employment or self-employment,
- Were to have started to work in employment or self-employment and are unable to reach that job,
- Became the breadwinner, or major support, because the head of the household died as a direct result of the disaster, or
- Cannot work because you were injured as a direct result of the disaster.

**DUA IS NOT INTENDED FOR PEOPLE WHO DO NOT REPORT TO WORK, IN ORDER TO STAY HOME TO DO DISASTER-RELATED CLEANUP WORK.**

**NOTE:** If, while filing for DUA during the Disaster Assistance Period, you meet the eligibility requirements to qualify for any other UI benefits, your entitlement to DUA benefits will be suspended until you exhaust all of your UI entitlement, including regular unemployment compensation (UC).

## **10. What benefits are available?**

DUA benefits are payable to individuals only for weeks of unemployment in the Disaster Assistance Period, which begins with the first day of the week following the date the major disaster began and for up to 26 weeks after the date the disaster

was declared by the President, as long as the individual's unemployment continues to be a result of the major disaster.

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

## **11. How do I file a claim?**

You must file an application for DUA within 30 days after the date on which the Pennsylvania Department of Labor & Industry announces the availability of DUA in the state. You must file within this time frame even though you may be eligible for other UI, such as state unemployment compensation benefits or weekly assistance benefits such as Trade Readjustment Allowances (TRA). If the 30th day falls on a Saturday, Sunday, or a legal holiday, the deadline is extended to the next business day. Applications may be accepted as timely if the applicant had good cause for the late filing, but in no event can the application be accepted after the expiration of the Disaster Assistance Period.

If you believe that you are entitled to DUA or may be entitled to DUA in the future, you should *immediately* call this toll-free number:

### **1-877-FILEDUA (345-3382)**

If you use a text telephone (TTY), call this toll-free number: 1-888-334-4046. A DUA claims representative will take your initial DUA application. When you call, you should have:

- Your Social Security Account Number, and if possible,
- Your Federal Income Tax Return for the most recent tax year that *ended prior to* the date of the major disaster.

If you cannot call for any reason, you may file your DUA claim by writing to the following address:

Scranton UC Service Center  
30 Stauffer Industrial Park  
Taylor, PA 18517-9625

In addition to filing an initial application for DUA, you may still be required to go in person to a Pennsylvania CareerLink office near you to register for work and for reemployment services.

Individuals who have moved or have been evacuated to another state should contact the affected state for claim filing instructions. Individuals can also contact

the State Unemployment Insurance agency in the state where they are currently residing for claim filing assistance.

More detailed information is available in the pamphlet [DUA-5, Disaster Unemployment Assistance](#) (available online from the Pennsylvania Department of Labor and Industry at [www.dli.state.pa.us](http://www.dli.state.pa.us)) or by calling the Scranton UC Service Center's toll free number, 1-877-345-3382.

# EMPLOYMENT CONCERNS VI (C)

## Workers' Compensation Issues

### Introduction

If you sustain a job injury or a work-related illness, the Pennsylvania Workers' Compensation Act (Act) provides for your medical expenses and, in the event you are unable to work, wage-loss compensation benefits until you're able to go back to work. Additionally, death benefits for work-related deaths are paid to your dependent survivors.

Benefits are paid by private insurance companies (also includes third party administrators) or the State Workers' Insurance Fund (a state-run workers' compensation insurance carrier) or by employers themselves if they are self-insured.

If your work causes an injury, illness or disease, you may be entitled to WC. No compensation shall be paid when an injury or death is intentionally self-inflicted, or is caused by an employee's violation of the law including, but not limited to, the illegal use of drugs. An injury or death caused by intoxication also may not be covered.

Additional information regarding workers' compensation benefits can be obtained online ([www.dli.state.pa.us](http://www.dli.state.pa.us) and use the Quick Link to "Workers' Compensation.") or through the following:

E-mail: [ra-li-bwc-helpline@state.pa.us](mailto:ra-li-bwc-helpline@state.pa.us)  
Phone: In PA: 1-800-482-2383  
Local or outside PA: 717-772-4447  
TTY: 1-800-362-4228

Bureau of Workers' Compensation  
1171 S. Cameron Street, Room 324  
Harrisburg, PA 17104-2501  
Phone: 717-783-5421

### Frequently Asked Questions

- 1. I am receiving workers' compensation checks but have had to relocate because of a disaster. How can I get my checks at my new location?**

You should notify the claims representative assigned to your case immediately. Once they are notified, they are required to send your checks to you in your new location.

**2. I was injured at work as the result of disaster. Am I eligible for workers' compensation benefits?**

In general, injuries resulting from natural disasters will be compensable. Injuries resulting from military activities, either the U.S. or foreign, are not.

**3. I want to apply for workers' compensation benefits. How do I apply?**

You are required to notify your employer within 21 days of your injury. If you do not, you will not be eligible for benefits until you provide notice. If you do not provide notice within 120 days, your claim will be completely barred. Once you have provided notice, your employer's workers' compensation carrier is required to make a decision on whether or not to make payments within 21 days. They are required to notify you of their decision.

**4. I am a dependent of a fatally injured worker? How do I apply for benefits?**

Same as #3.

**5. My claim has been denied. How do I appeal this decision?**

Contact the Bureau of Workers' Compensation's Helpline which will provide you the appropriate forms.

**6. I was treating with a panel doctor but can't get to him/her because of a disaster. Can I still get treatment?**

You are permitted to treat with a doctor of your choice in emergency situations. However, once the emergency is over, you must resume treatment with a panel physician if 90 days has not expired. Otherwise, the workers' compensation carrier will not have to pay for your medical treatment.

## **FINANCIAL ISSUES VII (A)**

### **Financial and Banking Matters**<sup>10</sup>

#### **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.

#### **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.

#### **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 phone book.

#### **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 more than one car, 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

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<sup>10</sup> ACBA Bankruptcy and Commercial Law Section Council; Finance Committee



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.

### **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 information about lawyer referral call the Allegheny County Bar Association number at 412-261-5555 or the hot line number for disaster.

Disaster victims concerned about their ability to pay their mortgage or other debts may have questions about bankruptcy. If you have income and you want to keep your house, you may be able to file a chapter 13 bankruptcy. In this type of bankruptcy, the homeowner proposes a plan of how (s)he will pay regular mortgage payments and all other living expenses, and also pays an amount every month toward the mortgage arrears. If you think you may want to file a Chapter 13 bankruptcy, you should consult an attorney.

Certain limits on an individual's ability to file a Chapter 7 bankruptcy took effect on October 17, 2005. Consultation with an attorney is highly recommended.

### **Credit Reporting**

This area is governed by the Federal Fair Credit Reporting Act, 15 U.S.C.A. Section 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.

### **Home Solicitation Contracts**

It is important to know when a sale was a home solicitation, because special laws cover this kind of sale. Door-to door sales count under federal law as home solicitation sales. The federal law applies to sale, lease or rental of consumer goods or services that cost \$25.00 or more. The law requires the seller to give the buyer a statement called a "Consumer's Right to Cancel," which tells you about your rights to cancel the sale, the date the sale took place, and the seller's address. If the buyer does not get a statement like this, s/he may cancel the sale at any time and in any way.

## **Frequently Asked Questions**

**1. The local banks are not cashing my checks or letting me withdraw money from teller stations. What can I do?**

If you do not have an account relationship with the bank, it may be concerned about whether there are sufficient funds in your account. Ask the bank to call your bank to determine your account balance. You can also establish an account with a bank in your new area by asking your bank to wire funds from your account to the financial institution in your new area.

**2. My direct deposit is not showing up in my account, and I need money. Is there somebody who can help me clear this up with the bank?**

Sometimes there are delays in the processing of transactions, including direct deposits, as banks activate back up plans. The banks will process the transactions once the plans are implemented. The delays should be rectified soon. Please talk to your bank about the problem. You can also contact the individual or company that originated the deposit to see if they have any information about the status of your deposit.

**3. If my ATM card does not work, what should I do?**

If your ATM card will not work, it is probably because your bank's verification system is not working. You may consider other options, such as cashing a check in the area where you are located or using a credit card. You may also contact one of the emergency service organizations, such as FEMA or the Red Cross, and request assistance.

**4. ATM fees are piling up, why aren't the banks waiving these fees?**

Please contact your banks and explain your situation. The regulators are strongly encouraging banks to waive these fees for those hardest hit by the disaster.

**5. I can't reach my bank by phone or Internet. What should I do?**

If your bank is located in the heavily storm damaged area and is not a part of a major regional or national institution, it may not be open for some time. You should contact one of the emergency service organizations, such as FEMA or the Red Cross, and request assistance.

**6. What about the contents of my safe deposit box?**

Most safe deposit boxes are held in the bank's vault, which are fireproof and waterproof. If possible, contact the branch or office where your box was located to determine the condition of your box.

**7. What happens if my bank has lost my records?**

Be assured that banks are required to have extensive contingency plans for all types of disruptions to operations, including natural disasters. Banks have backup systems of records and other built-in duplications that are housed in safe locations so that financial records can be reconstructed and restored.

**8. If my local bank was destroyed, is my money still insured?**

Yes, your money is still insured by the Federal Deposit Insurance Corporation. Deposits with a FDIC insured bank or savings institution will continue to be protected up to \$100,000. However, you should keep any financial records that you have in order to help reconstruct your accounts.

**9. How can consumers deposit or cash any insurance checks they may receive?**

By the time emergency relief and insurance payments are received the affected institutions should be prepared to process these payments for their customers. Should a customer's primary financial institution not be ready to receive these payments it is anticipated arrangements will be made with neighboring institutions to handle these special consumer needs.

**10. Will there be enough cash?**

Be assured the Federal Reserve System has and will continue to meet the currency needs of the financial institution industry. The banking industry nationwide has more than sufficient resources to fill any shortfall.

**11. Is my bank safe? Do you believe the affected banks will survive?**

We are not aware of any bank that has closed due to the impact of a natural disaster. Consumers can also rely upon the guarantees provided by the FDIC, which oversees the insurance funds that back deposits in banks and thrifts, and the National Credit Union Share Insurance Fund, which protects credit union depositors. These depositors can rest assured that deposit insurance is in full force.

**12. I am no longer working and don't have the income to live on and meet my payments. If I miss some loan payments, how will this affect my credit? Will I be charged late fees?**

Regulators are telling banks to be understanding during this time of crisis. They have asked banks to work with customers hit hardest by the disaster. Banks are being encouraged to allow some loan payments to be skipped without it counting against credit histories, extend the terms of loans, and to restructure loans to take

into account new sets of circumstances. Before skipping payments or changing the terms of the loan, contact your bank. FDIC is encouraging banks to be flexible in this time of crisis, including fees.

**13. I need longer term financing until insurance checks come in and I can find another job. Will banks help?**

We understand that not all banks provide short term, unsecured loans, but regulators have encouraged banks to consider making loans on a short-term basis to help consumers. We have promised banks waivers of certain rules governing this area.

**14. Where can I find a list of banks that are working with displaced people?**

The FDIC is attempting to keep such a list of banks. Here is the link to the most up-to-date list we have available:

[www.fdic.gov/news](http://www.fdic.gov/news)

**15. Who can I contact for more information?**

The FDIC usually sets up a hotline number at the time of a crisis which operates 24 hours a day, 7 days a week. Please watch for announcements or call the ACBA hot line.

**16. Who should I call about tax information?**

People affected by a disaster who need help with tax matters should call the Internal Revenue Service local office or check [www.irs.gov](http://www.irs.gov).

**17. I am worried about ID theft since my home was severely damaged during the storm or I am not sure where my belongings are at the moment.**

If you feel ID theft is a real concern, you may place a "fraud alert" on your credit file, which can help prevent a thief from opening new accounts or making changes to your existing accounts. Be aware that putting an alert on your account may prevent you from opening an account unless they are able to get in touch with you and positively confirm your identity and that you are applying for credit. However, if you have reason to believe you may be a victim of ID theft, contact the fraud departments of any one of the three major credit bureaus (Equifax at 1-800-525-6285, Experian at 1-888-397-3742, or TransUnion at 1-800-888-4213) to place a "fraud alert" on your credit file.

As always, protect your Social Security number, bank account and credit card numbers and other personal information, especially in response to unsolicited requests from strangers. Remember that fraud artists may try to take advantage of

the crisis by tricking victims (or their loved ones) into divulging personal information or by stealing sensitive mail or documents from homes and offices.

**18. 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 any non-exempt assets. Also, the collector has the right to report the unpaid debt to a credit reporting agency. 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.

**19. How do I decide which bills to pay first?**

Before deciding which bills to pay and which to ignore, clients need to know the consequences. The four types of debts listed below could have immediate, harmful consequences if unpaid.

- **Court-ordered payments**, such as alimony or child support, must be paid on time or jail time could be sought for contempt of court. If clients are unable to pay, do not simply ignore it. Ask the court to modify the payment order. A court will usually lower or eliminate your payments to meet your new financial condition. (Additionally, if you are on SSD, your children should be eligible for "dependents' benefits" which may entirely pay your support obligations. Check with your local Social Security office.)
- **Ongoing services**, such as utilities, telephone service, or health insurance coverage, must be paid or they will lose future service or coverage.
- **Items purchased on credit or pledged as security on a loan** can usually be taken from if payments cannot be made.

But be aware: even after a creditor has taken one of the above steps, it may still have the right to recover money. For example, although a bank has repossessed a car, if its resale value is less than what is owed, there may be liability for the difference.

**20. What property is protected?**

Under federal law there are certain things that cannot be taken, regardless of how much is owed and regardless of whether or not there is a bankruptcy. The most important of these are:

- Social Security payments, annuity income (this should cover private disability insurance payments), pension income, worker's compensation and unemployment compensation (There are some exceptions for child support, alimony, and taxes);
- Up to \$15,000 equity in a home;
- The proceeds and avails from a life insurance policy;
- Necessary household appliances and furnishings;
- Necessary personal items and clothing;
- Necessary medical equipment; and

If working, any tools needed for the job, and an automobile if it is necessary for the job (merely going back and forth to work does not qualify). If all property and income is exempt, then they should notify creditors. Once they know there is nothing to take, they will usually write off the debt or at least stop collection activity.

**21. *What about the contents of my safe deposit box? Does FDIC insurance cover safe deposit boxes?***

Deposit insurance does not cover safe deposit contents. Most safe deposit boxes are held in the bank's vault, which are fireproof and waterproof. If possible, contact the branch or office where your box was located to determine the condition of your box.

## **EDUCATION VIII (A)**

### **Public Education<sup>11</sup>**

The Pennsylvania School Boards Association has yet to put a plan in place for public education's response to a disaster. Volunteer attorneys should contact the PSBA at (717) 774-2331.

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<sup>11</sup> Allegheny County Association of Municipal and School Solicitors Board of Trustees