

RESOURCE MATERIALS

FOR RESPONDING TO LEGAL QUESTIONS

from THOSE AFFECTED BY DISASTERS

Prepared by the Alabama State Bar Pro Bono Committee

With support from the Young Lawyers Section and Legal Services Alabama - Central

With Gratitude to the State Bar of Georgia, the State Bar of Texas, Texas Rio Grande Legal Aid,
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NOTICE TO ATTORNEYS

The preparation of these materials is a collaborative project and the result of the efforts of many dedicated and committed attorneys in the State of Alabama.

This document is a work in progress. We may be revising chapters and adding chapters as we identify additional needs of those we are assisting. In that regard, we would like to hear from you regarding questions that you are fielding and thoughts on how this document can be improved. If you have comments or questions, please contact Linda L. Lund, Director, Alabama State Bar Volunteer Lawyers Program at linda.lund@alabar.org or (334) 269-1515. Please check frequently the websites of the Alabama State Bar (www.alabar.org), to make sure that you are using the latest version of this document.

If you have an interest in providing legal assistance to the victims of disasters, whether in person or by phone, please fill out the on-line form on our statewide volunteer lawyer site, <https://www.alabar.org/programs/volunteer-lawyers-program/enrollment/form/>.

HELPFUL DISASTER RELIEF WEBSITES

The following is a list of helpful websites that provide useful information to attorneys interested in volunteering or in providing legal assistance to those affected by disasters.

Alabama State Bar
www.alabar.org

National Disaster Legal Aid
www.disasterlegalaid.org

Alabama State Bar Lawyers Referral
<https://www.alabar.org/lrs-form/Service>
1-800-392-5660

Alabama State Bar Young Lawyers
Section Disaster HelpLine
800-354-6154

Federal Emergency Management Agency
www.fema.gov

U.S. Health & Human Services
www.hhs.gov

U.S. Postal Service
www.usps.com

Insurance Information Institute
<http://www.iii.org>

Legal Services Alabama
<https://legalservicesalabama.org/>

Probono.net
www.probono.net

Alabama Emergency Management Agency
<https://ema.alabama.gov/>

Social Security Administration
www.ssa.gov/emergency

U.S. Internal Revenue Service
www.irs.gov

Alabama Free Legal Answers
<https://alabama.freelegalanswers.org/>

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1.0 INTRODUCTION

1.1 Overview of This Document

This document is provided as a resource to attorney volunteers who are fielding questions from those affected by natural and other disasters. This document is a starting point and is not intended to be the sole resource in providing legal assistance to those affected by disasters. If a matter appears to be a true pro bono matter that would qualify for submission to the legal aid services organizations or clinics (all of which are based upon whether or not the applicant satisfies the intake and financial eligibility criteria), please gather the pertinent information regarding the claim or matter and contact a member of these organizations for further processing.

1.2 The Role of the Volunteer Lawyer

Type of Legal Services Rendered – Based on past experiences with disasters and other natural disasters, volunteer attorneys may be asked to provide advice on a wide range of issues, including:

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. Assisting in 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 and green cards,
8. Drafting of powers of attorney,
9. Estate administration (insolvent estates),
10. Tax questions,
11. Preparation for guardianships and conservatorships, and
12. Referring individuals to local or state agencies which might be of further assistance (e.g. consumer affairs).

1.3 Information You May Need in Helping the Victims

Obtain the following information from the individual you are assisting:

- Full name, names and ages of family members living with the individual at the time of the disaster;
- Whether they are a plaintiff or defendant in any existing cases (if so, you should assist them in locating their counsel),
- Present address and disaster area address, as well as telephone number(s) where the individual may be contacted,
- Description of losses and disaster-related problems,
- Insurance information, and
- If necessary for the type of legal assistance you are to provide, citizenship status.

Note: Only U.S. citizens and qualified aliens are entitled to FEMA benefits; however, children born in the U.S. to undocumented aliens qualify for FEMA benefits, while undocumented aliens are entitled to non-cash assistance through FEMA, including disaster legal services, emergency food and shelter, and crisis counseling.

1.4 Locating Missing Family and Friends

Persons affected by a disaster may notify loved ones of their well-being by registering on the Safe and Well feature of www.redcross.org. Click the “Get Assistance” tab, and then click “Register or Search the Safe and Well Listings.” Concerned family and friends can search the list of those who have registered themselves as “safe and well.” Those attempting to locate missing persons may attempt to mail the missing person a letter. If the missing person has filed a postal forwarding order, the missing individual should receive the letter. Finally, another source for information on how to locate a family member or friend affected by a disaster is:

<https://www.usa.gov/after-disaster> (then go to steps 4 & 5 below), or www.usa.gov, and follow steps 1 – 5 below.

1. Go to “All Topics and Services” in the top menu.
2. Click the “Disasters and Emergencies” tab.
3. Then click the “After a Disaster” tab.
4. Next, scroll down to the “Find Family After a Disaster” section.
5. Finally, access the “National Emergency Family Registry and Locator System” and “American Red Cross Safe and Well” links.

2.0 FEMA ASSISTANCE

2.1 Overview

This section discusses the types of federal relief that is provided after a natural disaster. The question and answer sections utilize information provided by FEMA at <https://www.fema.gov/faq>. Please see that site for a complete list of currently published FEMA questions and answers.

2.2 Summary of the Law

Emergency Declaration vs. Major Disaster Declaration

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207 § 401, provides for two types of disaster declarations: An **Emergency Declaration** and a **Major Disaster Declaration**. The President can declare an emergency for any occasion or instance when the President determines federal assistance is needed.

Emergency Declarations supplement State and local or Indian tribal government efforts in providing emergency services, such as the protection of lives, property, public health, and safety, or to lessen or avert the threat of a catastrophe in any part of the United States. A recent example of this type of declaration is the COVID-19 pandemic. The total amount of assistance provided for in a single emergency may not exceed \$5 million.

All requests for a **Major Disaster Declaration** shall be made by the Governor of the affected State. The President can declare a major disaster for any natural event, including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or, regardless of cause, fire, flood, or explosion, that the President determines has caused damage of such severity that it is beyond the combined capabilities of state and local governments to respond. A major disaster declaration provides a wide range of federal assistance programs for individuals and public infrastructure, including funds for both emergency and permanent work.

2.3 FEMA Disaster Assistance

FEMA Disaster Assistance

Not all assistance programs, however, are activated for every disaster. FEMA disaster assistance programs are Individual Assistance, Public Assistance, and Hazard Mitigation Assistance. Public Assistance and Hazard Assistance only assists State, Tribal, and local governments and certain private nonprofit organizations.

See a list of disaster declarations for Alabama at www.fema.gov/disasters/grid/state-tribal-government/24.

After the President has declared a “major disaster” and activated the Individual Assistance program, individuals, families, and businesses may be eligible for federal assistance if they live, own a business, or work in a county 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.** To apply for Assistance for Individuals and Households, individuals should register with FEMA toll-free at 1-800-621-3362 within 60 days of the declaration of the disaster. The FEMA publication entitled “Individual Assistance Program and Policy Guide,” includes information about what type of assistance is available under various FEMA programs, who is eligible, the process for obtaining assistance, and frequently asked questions. It is available online at https://www.fema.gov/sites/default/files/2020-09/fema_individual-assistance-program-policy-guide_11-29-2018.pdf

Not everyone affected by a disaster is entitled to FEMA assistance. FEMA has established a policy for preventing duplication of benefits under 44 C.F.R. § 206.191. FEMA’s duplication of benefits policy establishes the order in which the major forms of assistance should be provided (i.e., the sequence of delivery).

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

- 1. Volunteer agencies’ emergency assistance** (except expendable items such as linens and basic kitchenware).
- 2. Private insurance benefits** (homeowners, windstorm, flood, and/or automobile insurance) – Insured applicants must file a claim with their insurance company or companies 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. FEMA Individuals and Households Program (IHP)** – FEMA IHP provides grants directly to eligible individuals. The application period is sixty days from the disaster declaration, unless extended by FEMA. IHP includes Housing Assistance (HA) and Other Needs Assistance (ONA). As of October 2018, HA and ONA are subject to separate caps on assistance. (The cap for each for FY 2020 is \$35,500 but is subject to change each year.) Some eligibility requirements apply to both HA and ONA, such as the requirement that the applicants’ primary residence be located in a county included in the federal declaration of disaster and that at least one household member be a U.S. citizen or “qualified alien” as described in Q. 2.11 below.

Both programs include several subcategories of assistance.

- A. IHP Housing Assistance (HA):** FEMA funds and generally administers all aspects of HA. To apply for HA, the applicant must be registered with FEMA and

have an application for disaster assistance completed. During the application process, they will be asked if their home was damaged. If the home was damaged, an inspector will come to the home to determine whether the house is habitable and record all damage. Habitability is defined as safe, sanitary, and secure. If the house is not habitable, the person may qualify for HA.

1. Temporary Housing Assistance (THA) – THA is designed to help disaster applicants secure alternative housing when they are displaced from pre-disaster housing because the home has been rendered uninhabitable or inaccessible. THA eligibility is open to renters as well as homeowners.

This includes:

a. Lodging expense reimbursement for the cost of short-term lodging such as hotel rooms (but food, transportation, telephone, separately billed utilities, and other services are not eligible for reimbursement).

b. Rental assistance to rent a dwelling for the pre-disaster household to live in, generally disbursed in two-month increments, and subject to the approval of requests for continued assistance, available for up to eighteen months. Rental assistance is not counted against the HA cap.

c. Direct Housing Assistance, which is only offered when existing rental properties are not able to meet the demand. FEMA may provide in-kind assistance, in the form of trailers, manufactured homes, or other readily fabricated dwellings for use as temporary housing. As with rental assistance, this is generally available for up to eighteen months and remains subject to recertification of continuing eligibility. (Applicants receiving Direct Housing Assistance become ineligible for the financial forms of THA.)

2. Home Repair and Replacement Assistance: These forms of assistance are only available to those who also meet FEMA’s definition of “owner-occupant.”

a. Home repair (HR): Financial assistance is available for repairs necessary to restore a disaster-damaged home to a habitable condition. HR is not intended to address all of the damages or to completely restore a home to its pre-disaster condition.

b. Replacement assistance: Owners with destroyed homes can receive funds (subject to the IHP HA cap) towards the purchase of a new home.

B. IHP Other Needs Assistance (ONA) – ONA includes financial assistance such as:

1. Disaster-related medical and dental costs.

2. Disaster-related funeral and burial costs.
3. Disaster-related childcare costs.
4. Funds to repair or replace essential items of property or to address serious needs, such as clothing, household items (room furnishings, appliances), tools (specialized or protective clothing and equipment) required for the applicant's job, and necessary educational materials (computers, schoolbooks, supplies).
5. Fuels for primary heat source (heating oil, gas).
6. Clean-up items (wet/dry vacuum, dehumidifier).
7. Funds to repair or replace an essential disaster-damaged vehicle (excluding cosmetic damage).
8. Moving and storage expenses related to the disaster (moving and storing property to salvage and/or avoid additional disaster damage).
9. Other necessary expenses or serious needs as determined by FEMA (such as Critical Needs Assistance available following Hurricane Harvey – a \$500 lump sum payment for applicants with immediate critical needs for “life-saving” and “life-sustaining” items).

There are two types of ONA, “dependent” and “non-dependent,” which have two different sets of factors that contribute to one’s eligibility to ONA benefits.

- “**Dependent**” criteria: only individuals or households whose income is below a certain amount and do not qualify for an SBA loan may be eligible for the below mentioned types of assistance.

Personal Property Assistance: Repairing or replacing essential household items, such a furnishings and appliances, accessibility items for the disabled, and specialized tools and protective clothing required by employers.

Transportation Assistance: Repairing or replacing vehicles damaged by a disaster and other transportation-related costs.

Moving and Storage Assistance: Relocating and storing personal property from the damaged primary residence to prevent further disaster damage, such as ongoing repairs, and returning the property to the primary residence.

- “**Non-Dependent**” criteria: individuals and households may be awarded the following types of assistance regardless of whether they are eligible for an SBA disaster loan.

Funeral Assistance: Providing those who have incurred or will incur eligible funeral expenses due directly or indirectly from a disaster.

Medical and Dental Assistance: Assisting with medical or dental expenses caused by a disaster (includes, but is not limited to injury, illness, loss of prescription medication or equipment, insurance co-payments).

Child Care Assistance: A one-time payment that covers up to 8 weeks total of child care expenses if the child is age 13 and under (or 14-18 if disabled as defined by law).

Miscellaneous or Other Items Assistance: Reimburse those affected by a disaster for eligible items purchased or rented for the recovery process. An example of an eligible item would be a generator purchased to maintain electricity because of a medical condition (i.e. respirator, etc.).

2.4 Small Business Administration Loans

C. Small Business Administration (SBA) disaster loans - SBA provides low-interest disaster loans to businesses of all sizes, private non-profit organizations, homeowners, and renters. SBA disaster loans can be used to repair or replace the following items damaged or destroyed in a declared disaster: real estate, personal property, machinery and equipment, and inventory and business assets. When an applicant fills out the FEMA registration, they report their annual income. For certain income levels, the applicant is referred by FEMA to the SBA. There is a separate application to complete for SBA assistance. SBA will consider all income and expenses to determine an applicant’s eligibility. If SBA determines an applicant does not qualify for a loan, the applicant may be redirected to FEMA to be considered for other assistance. An applicant who does not accept the loan after approval might not be redirected to FEMA. **NOTE: Applicants should submit an SBA loan application even if they are waiting for an insurance settlement.** An insurance policy may not cover all the replacement, repair and rebuilding costs. An SBA disaster loan may be available to cover the difference.

If your only expenses are disaster-related medical, dental, or funeral bills, you do not need to apply for an SBA loan.

D. Volunteer organizations - These agencies provide aid during recovery as well as during immediate emergency response. This includes national and local groups. You

can speak to your FEMA representative and sign a Written Consent in order to allow them to liaise with local organizations and communicate your needs so that the local organization may better assist you.

E. Cora C. Brown Fund – This fund, named after Cora Brown, who died in 1977 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. Disaster victims need not apply for this assistance. By applying for disaster assistance, FEMA identifies potential recipients. FEMA uses these funds under the authority of 42 U.S.C. § 5201(b) of the Stafford Act and 44 C.F.R. § 206.181.

F. Other forms of individual assistance programs include:

2.5 Disaster Unemployment Assistance

Disaster Unemployment Assistance (DUA) – DUA provides unemployment benefits and re-employment services to people who are otherwise ineligible for regular state unemployment compensation and who have become unemployed because of major disasters. Benefits begin with the date the individual was unemployed due to the disaster incident and can extend up to 26 weeks after the Presidential declaration date. Any individual who is unemployed as a direct result of a declared disaster may apply for DUA. This includes self-employed business people, farmers, loggers, commissioned-paid employees and others whose unemployment occurred as a direct result of a declared disaster, but who are not eligible for the State’s regular unemployment insurance (UI) program. DUA is funded 100% by FEMA. In Alabama, individuals eligible to receive unemployment insurance will not qualify to receive DUA until all UI benefits have been exhausted. For program requirements and instructions on how to apply for DUA, see the links below or call 1-866-234-5382 (select option 2):

- o <http://www.fema.gov/disasters>

- o <https://www.labor.alabama.gov/>

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.

Also, the **Substance Abuse and Mental Health Services Administration** runs a disaster helpline:

- o 1-800-985-5990

- o <http://www.samhsa.gov/find-help/disaster-distress-helpline>

2.6 FAQs – Applying for FEMA Assistance

Q. 2.1: How do I apply for disaster help?

If you live in a disaster area declared by the President and need disaster help, call 1-800-621-FEMA (3362) (hearing/speech impaired ONLY—call TTY: 1-800-462-7585) or apply online at www.disasterassistance.gov. Click on “Apply Online” and the screens will prompt you through the process. If you get a busy signal when you call the 800 number, try calling in the evening after 9:00 p.m. or on the weekends when fewer people are trying to call. You may also apply to <http://www.m.fema.gov/> on your smart phone or mobile device.

When you apply, you should have a pen and paper available to write down important phone contacts. You will need your **Social Security number, current and pre-disaster address, phone numbers, type of insurance coverage, total household annual income, a routing and account number from your bank** if you want to have disaster assistance funds transferred directly into your bank account, and a description of your losses caused by the disaster.

Q. 2.2: What happens after I apply for disaster assistance?

NOTE TO VOLUNTEERS: PLEASE ALSO REFER TO ANSWERS TO QUESTIONS 22 & 27 BELOW BEFORE RESPONDING TO THIS QUESTION.

FEMA will mail you a copy of your application and a copy of “Help After a Disaster: FEMA Individual Assistance Can Help You Recover” that will answer many of your questions. This brochure is also available online at https://www.fema.gov/sites/default/files/2020-08/fema_help-after-disaster_english_trifold.pdf Many language versions are available.

- If your home or its contents are damaged, and you do not have insurance, an inspector should contact you within 10 to 14 days after you apply to schedule a time to meet you at your damaged home.
- If your home or its contents are damaged, and you have insurance, you need to work through your insurance claim first and provide FEMA with a decision letter (statement or denial) from your insurance company before FEMA issues an inspection. There is an exception for damages caused by flooding; if you have flood insurance, FEMA will issue an inspection before receiving a copy of your flood insurance decision letter to evaluate your eligibility for temporary living expenses because temporary living expenses are not covered by flood insurance.
- About 10 days after the inspection, FEMA will decide if you qualify for assistance. If you qualify for a grant, FEMA will send you a check by mail or deposit it into your bank

account. FEMA will also send you a letter describing how you are to use the money (for example: repairs to your home or to rent another house while you make repairs).

- If FEMA decides that you do not qualify for a grant, FEMA will send you a letter explaining why you were turned down and give you a chance to appeal the decision. **Appeals must be in writing and mailed within 60 days of FEMA's decision.**
- If you get an SBA Disaster Loan application in the mail, you must complete and return the application to be considered for a loan as well as certain types of grant assistance. SBA representatives are available at Disaster Recovery Centers to help you with the application. If the SBA finds that you cannot afford a loan, they will automatically refer you to FEMA's Individual and Household grant program for help (discussed above).
- If the SBA approves you for a loan, they will contact you. If the SBA finds that you cannot afford a loan, FEMA will contact you.

Q. 2.3: Two weeks ago, I mailed in the documents FEMA requested. When I called the Helpline, the service representative said the documents were not in my file. What should I do?

Please be sure to keep your phone number and mailing address current in FEMA's records. FEMA has implemented new technology to help inform you that FEMA has received your documents. You will be contacted via a recorded message informing you that FEMA has received your documents. You can also check the status of your application by creating an account at www.DisasterAssistance.gov and clicking Check Your Status.

If FEMA does not acknowledge receipt of the documents, it is best to resend them immediately. To try to head off similar problems in the future, keep the following tips in mind:

- Include your name, your Social Security number, the disaster number, and your registration ID number on all paperwork to speed handling and assure that the documents are placed in the correct file. (You may locate the numbers on the cover page that is included with all FEMA correspondence or in the upper left-hand corner of any letter FEMA sends you.)
- Keep a copy of all documents that you send to FEMA.
- Send them by fax or by certified mail so you can confirm when it has been delivered and keep that confirmation for your records.

Q. 2.4: The letter from FEMA said I had no damages or insufficient damages, but my home was damaged and some of my personal property was damaged, too. What do I do?

You may appeal any decision within 60 days of the decision letter. When you appeal a decision, you are asking FEMA to review your case again. Appeals may relate to your eligibility, the amount or type of help you received, late applications, or requests to return money. You will not automatically get another inspection just because you appeal. FEMA has up to 90 days to issue a decision on the appeal.

The link below will take you to information and an automated FEMA appeal letter. Follow the instructions and complete the fields:

https://www.lawhelpinteractive.org/login_form?template_id=template.2013-01-01.0389547927&set_language=en

For additional information on the appeal process, refer to pages 9-10 of the Applicant's Guide found on this website.

These website resources are good for all states.

Q. 2.5: How long does it take to get help from FEMA?

If you have damage to your home or its contents and you are uninsured, or you have suffered damage due to a flood, a FEMA inspector will contact you within 10 to 14 days of applying to set up an appointment to assess your disaster damages. Typically, within about 10 days after the inspection, you will receive a direct deposit into your bank account or a check in the mail if FEMA determines that you qualify for help.

Q. 2.6: I applied for disaster assistance two weeks ago and haven't heard from anyone. I keep calling the 1-800-621-3362 number, but I get a busy signal. Is there another way to follow up on my claim?

If you have access to the internet, you may want to consider checking the status of your case online. You can also check the status of your case by creating an account to track your progress at www.DisasterAssistance.gov. Another option is to visit a Disaster Recovery Center in your area if there is one.

Q. 2.7: I received my check for rental assistance, but there are no places to rent.

If you are eligible for housing assistance from FEMA but are unable to find a rental house or apartment within a reasonable commuting distance of your damaged home, please contact FEMA at 1-800-621-FEMA (3362) or visit a nearby Disaster Recovery Center. FEMA will evaluate your situation and, if appropriate, may authorize a travel trailer or mobile home.

To check for available hotels that will accept THA related to a specific disaster, check www.femaevachotels.com/.

Q. 2.8: I didn't receive enough money from FEMA to meet all my needs. What do I do now?

Most disaster aid programs are intended to meet only essential needs and are not intended to cover all your losses. Some people may qualify for assistance from more than one program and may receive additional help from another agency. For example, the Small Business Administration is a very important source of funding for repair and replacement of real and personal property. If you received a loan application packet from the SBA, please complete and return the application as soon as possible. No work can begin on the loan until you submit your application. If you do not agree with FEMA's decision, you may appeal the decision. To file an appeal, follow the appeals process that is explained in your letter from FEMA.

The link below will take you to information and an automated FEMA appeal letter. Follow the instructions and complete the fields.

https://www.lawhelpinteractive.org/login_form?template_id=template.2013-01-01.0389547927&set_language=en

Q. 2.9: I know of others in my neighborhood, city or state who received help from FEMA. However, I was told I have insufficient damages. Does FEMA use the same criteria when considering damages for everyone?

FEMA reviews each applicant's case individually and applies the same eligibility criteria. If you were determined to be ineligible because of insufficient damages and you feel this finding is incorrect, you have a right to file an appeal.

Q. 2.10: I have a new telephone number. How do I update my application?

Some information, such as current phone number, mailing address, or insurance policy number, can be updated online at the link below. To update other file information, you will need to call the FEMA Disaster Helpline at 1-800-621-FEMA (3362) (hearing/speech impaired ONLY—call TTY: 1-800-462-7585), visit a Disaster Recovery Center, or write to FEMA at the address provided on any correspondence you have received.

- To update your information online, go to: www.DisasterAssistance.gov.
- Click "Check Status" and log in to your online account or create an account.

Q. 2.11: What are FEMA's citizenship/immigration requirements?

You must be a U.S. citizen, non-citizen national, or a qualified alien in order to be eligible for FEMA cash assistance programs: Individuals and Households Program Assistance and Disaster

Unemployment Assistance. However, undocumented individuals can apply on behalf of their minor child who is a citizen and has a Social Security number. FEMA can provide information on how to obtain a Social Security number for a minor child. The minor child must live with the parent/guardian applying on his/her behalf.

The undocumented individual does not have to be a U.S. citizen, non-citizen national, or a qualified alien for crisis counseling, disaster legal services, or other short-term, non-cash emergency assistance. Voluntary agencies provide help regardless of immigration status.

For more information on who qualifies as a U.S. citizens, non-citizen nationals, or qualified aliens see https://www.fema.gov/sites/default/files/2020-09/fema_individual-assistance-program-policy-guide_11-29-2018.pdf

Q. 2.12: Are aliens eligible for disaster assistance? Who is eligible for disaster assistance?

As noted above, to be eligible for cash assistance from FEMA you must be a qualified alien.

For FEMA IHP, the “qualified alien” standard includes the following categories of immigrants: anyone who has been granted legal permanent residence (green card), refugee or asylee status, withholding of deportation, conditional entry, parole into the U.S. for at least one year, is a Cuban-Haitian entrant, is a battered spouse or child(ren) with a pending or approved spousal petition if there is a substantial connection between such battery or cruelty and the need for the benefits (does not apply if person responsible for battery or extreme cruelty resides in the household), or is a victim of trafficking who has been granted a “T-visa” or can demonstrate that she/he has a pending application that sets forth a prima facie case for T-visa eligibility. *See* 8 U.S.C. § 1641.

If applicants are uncertain about whether their immigration status falls within the qualified alien category, they should consult an immigration expert.

Noncitizens must meet the following requirements (in addition to other DUA requirements) to be eligible for Disaster Unemployment Assistance (DUA):

1. A noncitizen must be authorized to work for the weeks for which she is claiming DUA. *See* 56 Fed. Reg. 22800-01.
2. In addition, a noncitizen must have had one of the following statuses during the time she was earning the wages that are used to calculate her weekly benefit amount:
 - a. lawfully admitted for permanent residence in the United States at the time such services were performed (LPR or “green card” holder);
 - b. lawfully present for purposes of performing such services (for example, present on a temporary work visa); or

- c. permanently residing in the United States under color of law at the time such services were performed (this can be complicated—consult with an immigration attorney).

See 20 C.F.R. § 625.6(a)(1). With some exceptions, an individual’s weekly benefit amount is normally calculated using the wage credits earned during their “base period.”

2.7 FAQs – Disaster Recovery Centers

Q. 2.13: What is a Disaster Recovery Center and what services do they provide?

A Disaster Recovery Center (DRC) is a readily accessible facility or mobile office where applicants may go for information about FEMA or other disaster assistance programs, or for questions related to their case. DRCs are operated jointly by FEMA and the state for limited periods of time in communities impacted by a federally declared disaster. These “one-stop shops” for disaster survivors often include nongovernmental participants, as well.

NOTE: You can search for a DRC at <https://egateway.fema.gov/ESF6/DRCLocator>, or register online at www.DisasterAssistance.gov, or call 1-800-621 FEMA (3362) (hearing/speech impaired ONLY-Call TTY: 1-800-462-7585).

Q. 2.14: What are some of the services that a DRC can provide?

A DRC may provide:

- Guidance regarding disaster recovery,
- Clarification of any written correspondence received,
- Housing Assistance and Rental Resource information,
- Answers to questions, resolutions to problems and referrals to agencies that may provide further assistance,
- Status of applications being processed by FEMA,
- SBA program information if there is an SBA representative at the Disaster Recovery Center site.

2.8 FAQs – Employment Issues

Q. 2.15: I lost my job because of the disaster and am unable to make my mortgage (or rent) payments. Will FEMA make payments until I can return to work?

No. FEMA is not authorized to make such payments. If you lost work because of the disaster, you may qualify under the State of Alabama’s Unemployment Insurance or, if that is

unavailable, for Disaster Unemployment Assistance (DUA). See DUA section above or contact the local office of your State’s Employment Commission for information about DUA. The DUA program covers most people affected by a disaster, including many who do not normally qualify for regular unemployment aid. Also, be sure to speak to your lender or landlord and explain your circumstances. Special arrangements can often be made.

Q. 2.16: I have not been able to work since the disaster hit. My employer says that I still have a job, but I am not drawing a paycheck. Does FEMA pay for lost wages?

If you lost work because of the disaster you may qualify for Disaster Unemployment Assistance (DUA). See DUA section above or contact the local office of your State’s Employment Commission for information about DUA.

The Alabama Department of Labor may accept applications for DUA as a result of a Presidential Disaster Declaration for workers who lost their jobs and self-employed individuals who have been unable to work due to a disaster.

PLEASE REFER TO WWW.FEMA.GOV FOR THE MOST UP TO DATE INFORMATION ON THIS OR A FUTURE FEDERAL DISASTER IN YOUR AREA.

Please call 1-866-234-5382, toll free, with any questions regarding your DUA Claim and visit <https://www.labor.alabama.gov/> to get started on your application.

2.9 FAQs – Farm/Agricultural Damages

Q. 2.17: I had damages to my farm or ranch. Can FEMA help me?

If you sustained damages to your home or personal property, you should apply with FEMA for assistance. If you had damages to your crops, livestock, farm equipment, barns, dairy, or something similar, you should contact your local Farm Services Agency office to inquire about the USDA’s disaster assistance program. The Alabama Farm Service Agency is available at: <https://www.fsa.usda.gov/state-offices/Alabama/index>

FEMA does not offer grant assistance to businesses and farmers but does act as a referral agency. FEMA may also maintain a list of additional referral resources for business owners and farmers that can be accessed at FEMA.gov/disasters and by selecting your state, or by calling the FEMA Helpline (1-800-621-3362). Additional information is available at: <https://www.disasterassistance.gov/information/moving-forward/your-business-or-farm>

2.10 FAQs – Inspections

Q. 2.18: The inspector told me I was going to get money from FEMA. However, I got a letter from FEMA stating that I was not eligible. Which is correct?

The letter is correct. The inspectors are FEMA contractors and are not authorized to comment on eligibility matters. Inspectors file your inspection report, but do not determine your eligibility.

Q. 2.19: What will FEMA accept as proof that I occupied my home?

There are several documents that may be used to prove occupancy. They include but are not limited to: a mortgage statement or a lease for the damaged dwelling; a utility bill for the damaged dwelling you are occupying; a merchant's statement sent to the damaged dwelling; an employer's pay statement sent to the damaged dwelling; or a current driver's license showing the address of the damaged dwelling.

See page 53 of Individual Assistance Program and Policy Guide for a list of accepted documents https://www.fema.gov/sites/default/files/2020-09/fema_individual-assistance-program-policy-guide_11-29-2018.pdf

Q. 2.20: What will FEMA accept as proof that I own my home?

There are several documents that may be used to prove ownership. They include but are not limited to: the deed; deed of trust; mortgage payment book or other mortgage documents; real property insurance policy; tax receipts or property tax bill; or documentation showing that the applicant was responsible for maintenance of the home. There are three ways to be treated as an owner-occupant for FEMA benefits. Option one is to actually demonstrate legal ownership. Option two allows people who do NOT hold formal title, pay no rent, but who are responsible for the payment of taxes or maintenance of the residence, to prove ownership. Option three is for people with lifetime occupancy rights with formal title vested in another individual (also known as a life estate). *See* 44 CFR 206.111, Owner-Occupied defined.

Q. 2.21: My Inspector called me, and I missed the call. How do I contact the inspector?

The FEMA inspectors are out on inspections most days and cannot be reached while they are inspecting a home. You should wait for the FEMA inspector to call you again. The FEMA inspectors will try to call you three times to arrange an appointment to inspect your property. Inspectors will call your current phone contact number and the alternate number, if you provided one. If any of your contact information has changed, call the Helpline to update your information. The inspector may leave a notice at your damaged home with contact information if they cannot reach you by phone. If you do not respond promptly, FEMA inspectors will relay that information to FEMA and your application may be denied as "voluntarily withdrawn."

While this denial may be appealed, at best such a decision delays consideration of your application and should be avoided if possible.

Q. 2.22: I am not English proficient. How will I be able to communicate with the inspector?

FEMA is responsible for providing effective communication with people who are limited English proficient. FEMA must take into account habitability standards for people with accessibility issues in their assessment. To schedule an appointment with an inspector, call the FEMA hotline toll-free at 800-621-3362, voice/VP/711. Multilingual operators are available. TTY users may call 800-462-7585.

2.11 FAQs – Insurance

Q. 2.23: 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?

NOTE TO VOLUNTEERS: PLEASE ALSO REFER TO ANSWERS TO QUESTIONS 2 & 27 ABOVE AND BELOW BEFORE RESPONDING TO THIS QUESTION.

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.

Q. 2.24: 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, SBA, and other agencies may be able to help cover those losses that are uninsured or underinsured, and otherwise eligible.

Q. 2.25: Are insurance deductibles covered under FEMA's programs?

FEMA does not cover insurance deductibles. If your insurance settlement does not meet your disaster-related needs, you may be eligible for assistance from FEMA or the SBA. There can be no duplication of these programs.

Q. 2.26: 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. It is important that you get a denial of displaced housing immediately, so that you can ask FEMA to cover your temporary housing. This is not income qualified.

Q. 2.27: 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?

By law, 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. If your insurance company tells you that your deductible is greater than the amount of damage found, please request a letter from the insurance company, on company letterhead, and send it to FEMA, along with your application for assistance.

Q. 2.28: 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 for more than 30 days after you filed the insurance 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. You need to write a letter to FEMA, explaining the circumstances of the delay in settlement. Include documentation from the insurance company as proof of filing, or the claim number, the date filed, and an estimate of how long the settlement will take, if you filed by phone. 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.

2.12 FAQs – Late Registration

Q. 2.29: 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?

Apply anyway. 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.

See page 70 of Individual Assistance Program and Policy Guide

https://www.fema.gov/sites/default/files/2020-09/fema_individual-assistance-program-policy-guide_11-29-2018.pdf

2.13 FAQs – Returning Funds

Q. 2.30: I need to return a check or pay money back to FEMA. Where do I send it?

First, consider seeking more specific legal advice or services to evaluate whether you are correctly assessing the need to return the payment from FEMA. Even if FEMA demands repayment, you may wish to appeal that decision if you believe you were eligible for the funds received. When repayment is demanded after funds have been spent, you may wish to seek more information about FEMA’s ability to waive repayment in certain circumstances.

Treasury Checks: If you have not cashed the Treasury Check and wish to return it, or if you have been advised in an official letter from FEMA to return the check, mail it to: Department of the Treasury, Bureau of Fiscal Service, Philadelphia Financial Center, ATTN: Treasury Check Return, 1300 Townsend Road Philadelphia, PA. 1954-1026. Include your name, social security number, and FEMA application number. <https://www.fema.gov/how-make-payment-fema>.

Personal Checks/Cashier’s 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 check), by regular mail to: FEMA, P.O. Box 530217, Atlanta, GA. 30353-0217. If you send your payment by courier (i.e., UPS, DHL, or FedEx), send it to: FEMA, Bank of America, Lockbox Number 530217, 1075 Loop Rd., Atlanta, GA. 30337-6002. DO NOT send cash. Include a brief statement explaining why you are sending funds to FEMA. Include your name, social security number, and FEMA application number. <https://www.fema.gov/how-make-payment-fema>.

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.

2.14 FAQs – Road and Bridge Damages

Q. 2.31: 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.

Q. 2.32: 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. FEMA’s Individual Assistance program could cover the expenses of repairing privately owned access roads if the following criteria are met:

- It is the applicant’s primary residence;
- It is the only access to the property;
- It is impossible to access the home with the damaged infrastructure; or
- The safety of the occupants could be adversely affected.

Private property owners, established homeowners’ associations, and properties governed by covenant may apply for a low-interest disaster loan directly through the Small Business Administration (SBA) if the road or bridge is not already covered by a Homeowners Association agreement or Covenant that provides for maintenance/repair of the bridge or road.

Q. 2.33: 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 each register individually, particularly if the damages prevent or restrict access to their homes.

2.15 FAQs – Small Business Administration (SBA)

Q. 2.34: Why am I being referred to the SBA?

The Small Business Administration (SBA) is the primary source of federal funds for long-term recovery assistance for disaster victims. **SBA loans are not only for businesses.** The SBA has low-interest disaster loans for homeowners, renters, and non-farm businesses to cover disaster damage to real and personal property. Filling out the application is necessary for most homeowners and renters to be considered for all forms of disaster assistance.

Q. 2.35: Does the SBA make loans to individuals or just businesses?

The SBA can loan money to homeowners, renters, and business owners. Homeowners may borrow up to \$200,000 for disaster-related home repairs. Homeowners and renters may borrow up to \$40,000 to replace disaster-damaged personal property including vehicles. The SBA may not duplicate benefits from your insurance or FEMA. You may receive an SBA referral when you apply with FEMA. If the applicant does not qualify for a low-interest SBA loan, FEMA may be able to offer them additional disaster grants that help reimburse for lost personal property, vehicle repair or replacement, and moving and storage expenses.

Q. 2.36: How do I reach the SBA Hotline?

The SBA has loan officers in the Disaster Recovery Centers to provide face-to-face service to disaster victims. You may visit the SBA at any of these locations without an appointment. An SBA representative will be glad to answer questions and help complete your application. To find

out where the SBA disaster offices are located, an applicant can call the SBA toll-free at 1-800-659-2955, or email the SBA disaster customer service at: disastercustomerservice@sba.gov.

2.16 FAQs – Travel Trailer/Mobile Home

Q. 2.37: How long can I use the travel trailer/mobile home?

If FEMA provides you with a travel trailer or mobile home, you may be able to use it for up to 18 months from the date of declaration if you continue to have a disaster-related housing need.

Q. 2.38: My family is too large for a travel trailer/mobile home. What do we do?

FEMA can provide more than one travel trailer for a family if necessary.

Q. 2.39: Can I have a ramp built for a travel trailer/mobile home?

When FEMA makes its initial assessment of your site to decide if it is possible to place a travel trailer/mobile home at your home, FEMA includes any requirements for ramps. If you did not receive a ramp and require one, call the FEMA Helpline at 1-800-621-FEMA (3362). A helpline representative will ensure that someone will get back in contact with you.

Q. 2.40: One of the storms damaged the travel trailer that FEMA provided me. What should I do?

Contact the maintenance number provided when you were leased into your unit. If you do not have the number, call the FEMA Helpline at 1-800-621-FEMA (3362). A helpline representative will ensure that someone will get back in contact with you.

2.17 FAQs – General Questions

Q. 2.41: After the storm, the gas station up the street was charging \$10 a gallon for gas. Isn't that price gouging?

In most cases, the current price at the pump is not due to price gouging. However, Alabama law prohibits businesses from taking advantage of a disaster situation to engage in price gouging. If you find price gouging, contact the Alabama Attorney General's Office, which has the authority to investigate allegations of price gouging. You can file a complaint online at <https://www.alabamaag.gov/consumercomplaint> or by calling 1-800-392-5658 or 334-242-7335.

Q. 2.42: 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.

Q. 2.43: 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.

Q. 2.44: 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 time. Contact the Red Cross (www.redcross.org) or your local United Way office by calling 2-1-1 for a referral to a local agency that may be able to help.

Q. 2.45: 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. You may also qualify for assistance through the Disaster Supplemental Nutrition Assistance Program (SNAP). Call 2-1-1 to find out more information on how to apply. See <https://mydhr.alabama.gov/>.

Q. 2.46: 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, 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.

FEMA may help with debris removal from private property if it will:

- Eliminate immediate threats to life, public health, and safety;
- Eliminate immediate threats of significant damage to improved public or private property; or
- Ensure economic recovery of the affected community to the benefit of the community-at-large.

Q. 2.47: 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. In addition to the eligibility requirements for IHP, the applicant must provide proof that the piece of equipment is required for medical purposes (e.g., letter from physician stating that the applicant/occupant has a medical need for the equipment).

For more information on generator reimbursement, click the link below:

<http://www.fema.gov/media-library-data/1392312125767-5abcca185f7a96b60e4e243ae5b90bb2/Generator%20Reimbursement%20RP1002%201.pdf>.

Q. 2.48: Does disaster help have to be repaid?

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

Q. 2.49: FEMA told me to send in my receipts. What is the mailing address?

Please mail all correspondences to the following address:

- FEMA – Individuals and Households Program
National Processing Service Center
P.O. Box 10055
Hyattsville, MD 20782-8055; or
- Fax it to: 1-800-827-8112; or
- Upload from your personal computer to your online account at:
<http://www.disasterassistance.gov/>. Click “Check Status” and log in to your account.

Please write your name, last four digits of your Social Security number, disaster number, and registration number on all pages of your documents and keep a copy for your own records.

Q. 2.50: 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.

Q. 2.51: Can I get more information about disaster assistance on the Internet?

Yes. The best place to start is <http://www.fema.gov> or <https://www.disasterlegalaid.org/>.

Q. 2.52: I have a lot of damage, but I received a letter from FEMA stating I am getting “\$0.” Why?

Please read the entire letter which was mailed to you after you applied. This letter will explain the reason(s) for denial. The most common reasons for denial letters are because your application was incomplete, incorrect, or you have insurance to cover the loss or because your property is a secondary or vacation home. If you have received your insurance settlement and it does not cover all of your necessary expenses and serious needs, please contact FEMA at 1-800-621-FEMA (3362). If you do not qualify for assistance, the letter will also explain your rights to

file an appeal if you disagree with the reason provided by FEMA. If you wish to appeal, you must do so within 60 days of the denial date.

3.0 FALLING TREES, FLYING LIMBS & LOUD NEIGHBORS

3.1 Overview

Damages from the heavy rains and high winds brought on by disasters manifest themselves in a number of ways. This chapter addresses questions regarding those situations in which high winds or heavy rains cause damage to property from things such as uprooted trees and flying tree limbs, furniture, and other similar objects.

3.2 Summary of the Law

Generally, homeowner's insurance and/or automobile insurance will be the only resource available to a person who suffers property damage from fallen trees, limbs, or other debris during a storm. The person whose insurance policy will be liable for the damages (to the extent the policy allows) is the person on whose property the tree or debris lands, not the person on whose property the tree or debris originated. The homeowner will be personally responsible for the costs of removing the fallen trees, limbs, and other debris unless his insurance policy includes partial payments for debris removal or unless the position of the fallen trees creates a threat to the person's safety or impedes his access to the dwelling. The law does not allow a person to cut or trim branches from trees on a neighbor's property without that neighbor's express permission. Relief from disturbances caused by excess noise from saws and other power equipment after a storm is largely governed by municipal ordinances.

3.3 Assistance Numbers

Federal:

Federal Emergency Management Agency (FEMA) www.fema.gov; 1-800-621-FEMA (3362) - If your home was damaged during a disaster and repairs are not covered by insurance, you may qualify for a FEMA grant to make it safe and livable. Structural repairs (roof, foundation, etc.) may be covered but not cosmetic repairs (shutters, carpet, etc.). FEMA encourages homeowners with damage to register so that an agent can be sent to assess the damage and determine whether repairs will be covered.

Generally, FEMA requires private property owners to use their own resources to clean up debris from their property. There must be an immediate threat to life, public health, and safety to justify a public entity's removal of debris. Additionally, the removal must be expressly authorized by State or local authorities. FEMA's policy on removal of debris from private property is available online at:

http://www.ct.gov/deep/lib/deep/waste_management_and_disposal/debris_management/debris_management_brochure.pdf.

State:

The Alabama Emergency Management Agency provides contact information for different disaster management resources, including Individual Disaster Assistance, SBA loans, Disaster Unemployment Assistance, Disaster Legal Assistance, Food Assistance, and Agricultural assistance. Visit <https://ema.alabama.gov> for more information.

Local:

Many counties and cities have websites and contact information for disaster management resources. Check with your local government for more information on disaster response.

3.4 FAQs

Q. 3.1: My neighbor's tree or heavy branch fell onto my property and caused damage. Is my neighbor responsible for paying the costs to repair or restore all my damaged property?

As a general rule, your homeowner's insurance policy – not your neighbor's – will cover the reasonable cost of repair of the damages to your house or any attached structure, such as a garage. If the cost to repair the property is more than the fair market value of the property before the loss, your damages will likely be limited to the fair market value only.

If the tree damaged or destroyed a detached garage, shed, fence or other structure not part of your house, your insurance policy is also responsible, but the coverage for those structures will usually be limited to a maximum of 10 percent of the coverage on your dwelling.

If the tree or branch fell onto your car, your homeowner's insurance will **not** cover the damage. Instead, you will have to make a claim under your auto insurance policy if you have comprehensive coverage. If a guest's car was damaged, the guest's automobile insurance comprehensive coverage policy would pay for that damage.

If the tree caused damage to your landscaping, your insurance policy will probably not cover the loss. You might be able to sue for the reasonable costs of replacing the damaged ornamental trees and shrubs if you can prove that their loss reduced the market value of your property. Many courts will apply a before-and-after rule in assessing your landscaping damages. Under that rule, damages are measured by taking the difference in the property's market value immediately before and after the destructive event. Typically, the payment to restore landscape damage is limited to a maximum of 5 percent of the amount for which your home is insured. On occasion, you might be awarded a specified dollar amount to replace each damaged plant.

If the tree did not damage your house or any other structures on your property but is lying across your lawn, your insurance company will probably **not** pay to have the tree and other fallen branches removed and you will have to cover the cost of debris removal yourself. Your insurance company might agree to pay to have the tree removed if it is blocking your driveway

or preventing use of a wheelchair ramp by a disabled person. If it does pay for removal, the maximum coverage will probably be around \$500, depending on the terms of your policy.

Q. 3.2: If the tree that fell from my neighbor's yard was visibly diseased or dead, does that alter my ability to recover damages from my neighbor?

If the neighbor knew that the tree was diseased or dead or if you had pointed out its dangerous condition and asked him to remove it, your insurance company will still be responsible for paying your claim. But, if you can prove that the neighbor knew the tree was diseased and posed a threat to your property, your insurance carrier might attempt to recover its costs from your neighbor's insurance carrier and then reimburse you for your deductible. If the decay is not patently obvious, or your neighbor never acknowledged that the tree was dead or dangerous, it is unlikely that your insurance carrier will sue your neighbor and try to recover its costs.

Q. 3.3: My neighbor's visibly dead or diseased tree looks like it will fall in a bad storm, but he hasn't agreed to have it cut down. Can I hire someone to cut it down?

No. You may not trespass on your neighbor's property or trim or remove any plants growing there. You should send a letter to your neighbor expressing your concerns and keep a copy of your written communications along with a photograph of the tree in case it does fall and cause damage in the future. You can also contact a local government agency to report your concern about the dead or diseased tree, and request that it evaluate whether the tree is dangerous. If it is, the agency can issue a notice requiring removal.

Q. 3.4: Can I make my neighbor trim any tree branches that hang over my property?

No. But you can trim the branches as far back as your property line as long as you do not kill the tree or extend your trimming onto the neighbor's property. If the tree is diseased, you should ask the local government to handle its removal.

Q. 3.5: No trees or heavy branches fell on my property during the disaster, but I don't like having to clean up all the smaller limbs and leaves from my neighbor's tree that are cluttering my yard. Can I make my neighbor pay for debris removal?

No. You can ask if your neighbor would help you clean up, but he is not obligated to do so. Home ownership carries with it the responsibility of taking care of your own property.

Q. 3.6: My neighbors are planning to cut down all their large trees in order to avoid future storm damage, but their trees provide the only shade I get in my yard. Can I stop them from doing this?

Probably not. The trees belong to your neighbors and they can do whatever they wish with their trees and shrubs. However, if you live in a development covered by a homeowner's association,

there may be restrictive covenants that would apply to the situation. There may also be local tree ordinances that control the removal or planting of trees on private property.

Q. 3.7: My neighbors are running chainsaws all day and into the evening hours to clear debris from their property. It is interfering with my ability to work and my children's ability to sleep. Isn't there some way I can prevent them from doing that?

Most municipalities and some counties have noise ordinances that restrict the hours during which chainsaws or other mechanical equipment can be used, although such ordinances may not apply during post-disaster clean-up periods. Check with your local government or FEMA officials to find out what the rules allow and then try to reach an agreement with your neighbor.

Q. 3.8: I live in a condominium. My unit was damaged by falling trees or limbs but the other units were not. Do I have any rights in this situation?

You should contact your homeowner's insurance carrier about coverage and also review the provisions in your association's insurance policy to ascertain whether that policy provides additional coverage that your own policy may exclude.

Q. 3.9: The fence between my property and my neighbor's property was knocked down or damaged by the falling trees. Who has to pay to replace it?

If the fence was constructed on your neighbor's property, it is his fence. He can either replace it or remove it or leave it lying there. The same answer applies to you if the fence was on your property. If the fence was on your neighbor's property, but fell onto yours during the storm, you may remove it from your property. Your neighbor may do the same if the situation is reversed.

If the fence was erected because the homeowners' association or a deed restriction required that a fence be maintained on the borderline between the properties, then you and your neighbor will probably be considered joint owners and will need to share the cost of repair and replacement of the broken fence.

Q. 3.10: I lease the house or apartment that was damaged by a falling tree or other storm debris. What rights do I have?

If you are a tenant and a tree or branch damages your leased dwelling, you should contact the lessor and request that he file a claim under his homeowner's insurance. Keep in mind that the homeowner's insurance policy will cover the reasonable cost of repairs to the structure, not to your personal property inside. If you have an insurance policy covering personal property loss, you should take photographs and contact your insurance agent promptly. Make copies of your request for coverage of your losses to the lessor and to your own insurance company and retain a copy of all correspondence relating to the damages you suffered.

4.0 LANDLORD/TENANT ISSUES

4.1 Overview

This chapter focuses on Alabama’s statutory and common law regarding the rights of landlords and tenants renting residential property. This information reflects Alabama law as of February 2021. Be cautious of materials that include general statements of what the law usually is across the nation, as Alabama’s landlord tenant law may be different from other states.

4.2 Summary of the Law

Rental of property used as a residence or home in Alabama is governed almost exclusively by Title 35, Section 9A of the Alabama Code. Decisions of the Alabama Court of Civil Appeals and the Alabama Supreme Court further defined the rights of landlords and tenants. Callers should be strongly discouraged from taking actions based on what they think their rights are, especially as it relates to withholding rent and/or terminating the lease.

The starting point in answering any landlord-tenant question is the lease between the parties. The lease between the parties defines the terms of their agreement. However, under Ala. Code 35-9A-163, neither a landlord nor a tenant may waive, assign, transfer, or otherwise avoid:

- (1) The duty of a landlord to make repairs, Section 35-9A-204,
- (2) The liability of a landlord for failure to make repairs, 35-9A-401 or 35-9A-404 (2), or
- (3) The landlord’s duty to comply with the security deposit section set forth in 35-9A-201.

Parties to commercial leases are given wide latitude in crafting their agreements. Commercial landlords and tenants can waive the above provisions but residential landlords and tenants cannot. Therefore, the lease document will almost exclusively govern the commercial rental relationship. If a particular situation is not expressly contemplated or addressed by the lease, then the relevant case law and rules of contract construction will apply.

Verbal Lease Agreements

Sometimes there is not a written lease between the landlord and tenant. A tenant who occupies residential rental property without a written lease is a “tenant-at-will.” Alabama landlord tenant laws still apply. A tenant-at-will has the right to occupy and use the rented property according to the verbal agreement between the landlord and the tenant. Regardless of whether or not there is a written lease, the landlord is obligated under state law to make repairs.

A landlord who has a tenant-at-will must give a thirty (30) day notice to the tenant before seeking to terminate the agreement. Ala. Code 35-9A-441. A tenant-at-will must give a thirty (30) day notice to the landlord to terminate the original agreement. Either party must provide written notice of their intent to end the verbal lease. When a tenant-at-will fails to pay rent, the

landlord is not required to give the thirty (30) days' notice before demanding possession, and may follow the procedures outlined in 35-9A-421.

A tenancy-at-will can also be created when a written lease expires and the landlord accepts rent and permits the tenant to remain beyond the lease term. Usually, the terms of the original lease still apply to the tenancy. It is not unusual for the written lease to provide for a higher rent if the lease expires and month-to-month or tenancy-at-will is created. When a written lease does not state when the tenancy will end, it is treated as a tenancy-at-will.

Repairs and Maintenance

In all residential leases, the landlord has a responsibility to keep the rental property in good repair. The lease should not require the tenant to make repairs or waive the landlord's responsibility for maintaining the property. Any lease provision which makes the tenant responsible for repairs is challengeable under Alabama law. The landlord is responsible for maintaining the building structure and keeping operational systems such as the electric, heating, and plumbing. The landlord is also responsible for repairing any appliances including heating and air conditioning included in the rental unit. A landlord is further responsible for meeting all local ordinances and minimum safety standards. The tenant should not be charged for repairs caused by ordinary wear and tear.

Defects in the rental unit that were obvious when the tenant inspected the unit before moving in are not the responsibility of the landlord to repair. If, for example, a damaged ceiling does not make the unit unsafe or unsanitary, the landlord is not required to repair it. If the tenant was aware of a defect at the time the lease was signed, the tenant waived the right to require the landlord to make the repair. This is why it is important for a tenant to carefully inspect the unit before signing the lease and to have the landlord put in writing any promises to make repairs. This does not apply to problems with the unit that the tenant would not be able to discover during an ordinary inspection of the unit prior to moving in.

Some cities and counties have local ordinances or codes which regulate residential rental housing. These codes and ordinances are often enforced by the city or county. A landlord must comply with applicable local housing codes. Tenants can file complaints with the housing code inspector if they live in a city, town, or county with a housing, building, or health and safety code.

The landlord is responsible for making repairs within a "reasonable" time after being notified of the need for the repair. If the landlord undertook and completed repairs within a reasonable time after notice, the landlord has fulfilled his repair responsibilities and compensation to the tenant for the loss is unlikely. However, if the landlord unreasonably delayed in undertaking the repairs, and the tenant suffered a loss due to the delay, the tenant may have a claim against the landlord for damages to personal property caused by the delay in repair. The tenant does have a responsibility to protect his property from damage.

Generally, a landlord will not be required to compensate a tenant for the temporary loss of a portion of the premises. This should not prevent tenants from asking the landlord for compensation for their loss and inconvenience. The apartment complex is a business and you are its customer. It is usually more successful for a tenant to negotiate for a future rent credit than to ask the landlord to pay cash out of pocket. Use common sense and reasonableness when approaching the landlord seeking compensation.

Tenant's Remedies for Landlord's Failure to Repair

Under Alabama law, a tenant may not withhold rent due to a landlord's failure to make repairs. Ala. Code § 35-9A-164. A tenant's only options are outlined in Ala. Code § 35-9A-401 and § 35-9A-404:

1. A tenant may send a letter to the landlord outlining the repairs needed. If the repairs are not made within 14 days, the tenant may lawfully break the lease.
2. The tenant may sue for the diminution in value of the residence.
3. If a landlord unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electric, gas, or other essential service, the tenant may sue for up to three times the monthly rent. § 35-9A-407.
4. A tenant may counterclaim for the landlord's failure to make repairs in any action for possession brought by the landlord. § 35-9A-405.

Many other states allow tenants to withhold rent for a landlord's failure to make repairs. This is one of the most common misconceptions that tenants in Alabama have. This should be mentioned when counseling any tenant in this situation.

Eviction Process in Alabama

No Self-help Evictions

Self-help evictions, including locking a tenant out of the unit, are illegal in Alabama. A tenant may file a lawsuit against the landlord for any damages due to such wrongful conduct. Ala. Code 35-9A-407.

Before Filing

Before contacting the court to begin eviction proceedings, the landlord must comply with Ala. Code 35-9A-421 regarding notice and termination. Before filing an unlawful detainer, the landlord must demand in writing that the tenant immediately give up possession and vacate. The landlord must give the tenant notice of the breach and at least 7 business days to "cure" the breach, unless it threatens the health or safety of other residents. If the breach is nonpayment of

rent, the landlord must specify the amount of rent owed and that the tenant has 7 days to “cure” the breach by paying the rent.

If the tenant refuses or fails to give up possession, the landlord or the landlord’s agent or attorney may go to the District Court and file an Unlawful Detainer action. Ala. Code 35-9A-421. A landlord can file an unlawful detainer to remove a tenant if the tenant fails to pay rent, violates a term of the lease, or remains in possession after the lease has ended. The action must be filed in the county where the rental property is located. District Courts have exclusive original jurisdiction of unlawful detainers. Ala. Code 6-6-330.

Service

After the landlord files the Unlawful Detainer, it must be served on the tenant. This can be done by sheriff or private process server. There are three ways in which the summons can be served on the tenant:

1. It can be delivered personally to the tenant,
2. It can be delivered to a competent adult who resides in the unit, or
3. The summons can be posted on the door of the home and on the same day sent by first class mail to the tenant’s address. This type of service is called “post and mail” and is appropriate only if no one is at home when the sheriff attempts personal service. Service by posting confers only *in rem* jurisdiction to the court. That is, the court may award a judgment of possession to the landlord, but may not award any monetary damages. *Gaudin v. Collateral Agency*, 624 So. 2d 631 (Ala. Civ. App. 1993).

Tenant’s Answer

The court papers served on the tenant should state that the tenant may answer either orally or in writing within seven (7) days from the date of service. A tenant must answer an unlawful detainer within seven (7) calendar days of service. A tenant has until the close of business on the seventh (7th) day to file the answer. Alabama Rule of Civil Procedure 6 provides the method for counting the seven days. The first day (the day of service) is not counted but the last day is counted. If the last day falls on Saturday or Sunday, the party has through the following Monday. When the last day prescribed for such action falls on a public and legal holiday, the party has until the next business day.

If the tenant fails to respond at the end of the seventh (7th) day, the lawsuit is in default. The court can then grant the landlord a Default Judgment. The tenant has 7 additional days to appeal or file a post-trial motion. If no motion or appeal is filed, the landlord may receive a Writ of Possession after 7 days. The sheriff may then remove the tenant immediately.

If the tenant answers the summons, a trial of the issues will be held in accordance with the procedures of the court.

An answer is the tenant's response to the landlord's unlawful detainer complaint. The answer is the tenant's opportunity to state why the landlord is not legally entitled to an order removing the tenant from the rental property. If an answer is filed, the court will schedule a hearing in which the tenant and landlord can each present their case.

Where an answer has been filed, even if it does not contain an adequate legal defense, the clerk must treat it as an answer until a judge determines otherwise.

If the Unlawful Detainer seeks possession and money damages, the answer to the unlawful detainer must contain any legal or equitable counterclaims the tenant may have against the landlord. *Morrow v. Pake*, 263 So. 3d 1054 (Ala. Civ. App. 2018). If the tenant has any claims against the landlord for damage caused by the landlord's breach of the lease or failure to perform his responsibilities those claims must be put in the answer as a counterclaim. If a tenant fails to put in their answer any logically related claims which she has against the landlord, the tenant may not be able to raise those claims later in a separate action. This means that if a tenant has a damage claim for failure to repair it must be raised as a counterclaim or lost. Also, a party seeking to have any potential judgment for the landlord reduced by previously paid rent deposits must raise such a claim in their answer or it is lost. Even if the unlawful detainer is dismissed or a writ of possession issued before a final judgment, the tenant is still entitled to a hearing on their counterclaims.

Tenant's Defenses

The tenant may have defenses to the unlawful detainer action, including but not limited to:

- **Acceptance of Rent/Waiver**

A tenant may respond to the pre-filing lease termination notice sent by the landlord by tendering the full amount of rent due within 7 business days. The tenant may only cure the same "breach," such as nonpayment of rent, 2 times in a year. If the tenant offers the full amount of rent owed, the landlord must accept it.

If the landlord refused to accept the full amount owed within the 7-day period, the tenant has a defense that they should raise in their answer.

The landlord is not allowed to accept rent after the expiration of the 7 days' notice without waiving its right to proceed under that notice. Ala. Code 35-9A-424. The same applies after the unlawful detainer is filed.

Once the unlawful detainer is filed, the landlord is not required to accept the past due rent owed. If the tenant is able to cure their breach before their trial date, their landlord may be willing to accept it, or may be willing to work with the tenant.

- **Failure to give proper notice under § 35-9A-421 – failure of landlord to perform condition precedent to filing unlawful detainer action, and grounds for dismissal**

- Failure to obtain personal service on defendant – landlord only entitled to judgment for possession claim, not monetary claims.
- Retaliation – under § 35-9A-501, a landlord may not retaliate against a tenant for requesting repairs, etc.
- Lack of clear title/proof of ownership by plaintiff to the property in question.

Judgment

If the unlawful detainer was served and the tenant did not file an answer, the court can issue a default judgment after the time to file an answer expires. If the tenant files an answer, the court will schedule a date for a hearing. Once an answer has been filed, and a hearing has been held, the court will issue its decision. If the court rules for the landlord, the tenant will be ordered to move after seven (7) days and may be ordered to pay past due rent.

When a tenant fails to file an answer in an unlawful detainer, the court enters a default judgment against the tenant. This judgment gives the landlord the right to take possession of the rental unit and may include a money judgment against the tenant. A tenant may file a post-trial motion asking the court to set aside the default judgment under Alabama Rule of Civil Procedure 55 and may cite excusable neglect under Alabama Rule of Civil Procedure 60.

Appeals

Both the tenant and the landlord have seven (7) days after the judgment is entered in a dispossessory action to file an appeal. The judgment is entered once it is filed with the court clerk. An appeal is filed in the court which entered the judgment being appealed. Courts charge a fee to file an appeal. If a person seeking to appeal cannot afford the cost to file an appeal, they can ask the court to waive payment by filing an Affidavit of Hardship.

An eviction heard in the District Court can be appealed to the Circuit Court within seven (7) days. A jury trial may be requested. After that, a case can be appealed to a higher appellate court.

In order to appeal an unlawful detainer while remaining in possession, the tenant must pay an “appeal bond” equal to the amount of rent that has come due since the filing of the eviction. This is a cash bond and should be set by the court in its judgment of possession. It is due at the time of filing the appeal. The tenant must also continue paying monthly rent into the court while the appeal is pending. If the tenant does not do so, the appeal is subject to being dismissed. The tenant may appeal the unlawful detainer without paying rent into the court if they do not remain in possession of the home. Ala. Code § 35-9A-461(d).

Removal of Tenant

After seven days from the date of judgment (either by default or after trial), if no appeal or post-trial motion is filed, the “writ of possession” issued by the court allows the landlord to have the tenant’s property removed from the rental unit. A landlord cannot execute the writ and remove

the tenant from the property until the expiration of the seventh (7th) day after the judgment was entered or longer if the court orders. Once judgment has been entered, even if the tenant pays the landlord the money owed, the tenant can still be removed from the property.

The “writ of possession” allows the landlord to remove from his property the tenant and her personal property. The landlord can remove the tenant and those persons occupying the property with the tenant’s permission. Personal property includes the tenant’s general belongings such as clothing, furniture, dishes, and other household items. The landlord is responsible for the cost of the eviction and can use the service offered by the sheriff or hire a private company.

If the landlord and the officer executing the warrant agree, the tenant’s property may be placed on land other than that owned by the landlord such as the sidewalk or street. The landlord owes the tenant no duty to protect the personal property removed from the unit. After the “writ of possession” is executed and the property is removed from the rental property, the tenant’s personal property is considered abandoned. The landlord is not required to protect the property from third-parties or the weather. It is very important that the landlord set the property outside the unit.

4.4 FAQs - General

Q. 4.1: What are my rights if I want to terminate my lease on my dwelling following the disaster?

In general, a tenant should not have to pay rent if the rental unit is no longer habitable. When the tenant’s unit is damaged, the tenant needs to notify the landlord of the damage verbally and in writing. If the tenant wants to move, the tenant should offer to vacate the unit and ask that the landlord provide a written document releasing the tenant from the lease. The agreement should make clear that the tenant will not be charged any early termination penalties. If the landlord will not let the tenant out of the lease, the landlord must make any necessary repairs to the unit. Ala. Code § 35-9A-204 states that in a residential lease “a landlord shall . . . keep the premises in a habitable condition.” This law requires that a landlord repair the unit damaged by a natural disaster.

Q. 4.2: If the premises are totally unusable because of the disaster, do I have to permanently move out even though I want to stay?

Ala. Code § 35-9A-406 provides that when a residential rental unit is damaged or destroyed by fire or possession is lost by any casualty not caused by the landlord, the tenant may:

- (1) immediately vacate the premises and notify the landlord in writing within 14 days thereafter of the tenant's intention to terminate the rental agreement; or

- (2) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

If the rental agreement is terminated pursuant to this section, the landlord shall return all security recoverable under § 35-9A-201 and all unearned prepaid rent. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty.

The landlord's failure to repair a unit damaged by flooding or any other natural disaster is a breach of his duty to the tenant to keep the unit in good repair. When a landlord breaches his duty to a tenant, it can result in a "constructive eviction," which relieves the tenant from having to pay rent. It may be possible to argue that the destruction of the property, unrepaired by the landlord, is a constructive eviction that would make the tenant no longer responsible for paying the rent.

Put another way, for damage to a residential unit to constitute a constructive eviction that would release the tenant from the obligation to pay rent, there must be a failure by the landlord to make repairs that leaves the unit unfit (not merely uncomfortable) for the tenant to live in. The tenant must also vacate the unit.

Q. 4.3: If the dwelling is partially unusable because of the disaster but if I don't want to permanently move out, can my rent be partially abated (temporarily reduced)?

In all residential leases, the landlord has a responsibility to keep the rental property in good repair. The tenant cannot stop paying rent even if the landlord fails to make repairs.

The landlord is responsible for making repairs within a reasonable time after being notified of the need for the repair. If the landlord undertook repairs within a reasonable time after notice, the landlord has fulfilled his repair responsibilities. If a landlord fails to make repairs, the tenant can assert a claim for "diminution in value" based upon the decrease in the value of the apartment because of the landlord's failure to make necessary repairs.

Generally, a landlord will not be required to compensate a tenant for the temporary loss of a portion of the premises. This should not prevent the tenant from asking the landlord for compensation for loss and inconvenience. It is usually more successful for a tenant to negotiate for a future rent credit than to ask the landlord to pay cash out-of-pocket. Use common sense and reasonableness when approaching the landlord seeking compensation.

Q. 4.4: 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, a tenant must continue to pay rent even if the landlord does not make repairs unless the premises become uninhabitable and a constructive eviction results.

Before a landlord can be required to make a repair, he must be given notice of the defect. The tenant should give the landlord written dated notice of the problem needing repair. The tenant should keep a copy as a record of any such notice. Written notice provides evidence that the landlord was aware of the need for the repair. If it is not possible to give written notice, verbal notice is acceptable unless the lease requires written notice. Be sure the lease provision for notice is followed.

Q. 4.5: My current unit is uninhabitable due to a disaster, but my landlord has another available. Can he make me sign another lease contract extending the length of my lease in order to move to the new unit?

Your landlord may treat the original lease as terminated and ask you to sign a new lease. You can negotiate the terms of the new agreement with the landlord.

Q. 4.6: Do I have to keep paying rent to my landlord while I am not living at my house/apartment?

Yes. Unless the rental premises are, as a practical matter, totally unusable for residential purposes, a tenant will generally not be excused from paying rent while not occupying the premises. This is true even in a case where authorities have “asked” residents not to return to an area because of the effects of a recent disaster. (This may change, however, in the event the authorities permanently forbid residents from returning to the area.)

Q. 4.7: 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. Disaster Unemployment Assistance (DUA) may be available to you if you do not qualify for standard Unemployment Insurance (UI), are unemployed as a direct result of the disaster, are able and available to work, file an application for DUA within 30 days of the date of announcement of the availability of DUA, and have not refused employment in a suitable position.

If the lease is terminated by the landlord because the premises are totally unusable, you must move out—regardless of whether you can or cannot pay the rent. If you live in public or federally subsidized housing or receive Section 8 assistance, you are entitled, in most circumstances, to have the rent reduced when you suffer a loss in income. You must notify the landlord or the housing authority. If the premises are only partially unusable and if you don’t pay the abated (partially reduced) rent, you must move out if the landlord asks you to – unless you and the landlord agree otherwise. If the landlord is entitled to evict you and you do not move after the landlord has given you notice to vacate, you can be evicted only through an eviction lawsuit.

Q. 4.8: How can I pay rent if I want to?

It is recommended that you contact the landlord to determine what methods of payment may be viable. Should you be unable to successfully contact the landlord, sending a money order via certified mail to her last available address is advisable.

Q. 4.9: Can my landlord rent my home/apartment to someone else while I am gone?

No. The landlord must honor the lease unless the dwelling is totally unusable or the lease contains an express provision allowing the landlord to terminate in event of a fire, flood, or similar casualty. If the landlord wants you out in order to move someone else in, then the premises are obviously not “totally unusable” and the landlord cannot terminate the lease. If the landlord unlawfully locks you out, you should contact the sheriff or police to assist you in gaining access to the property.

Q. 4.10: How do I contact my landlord?

It is advisable to try every means of communication available, including, but not limited to: telephone calls to every available phone number, e-mail correspondence, and letters sent via mail to the last known address. The tenant should document all efforts and attempts to contact the landlord.

Q. 4.11: My landlord told me to move out because the dwelling is totally unusable after the disaster. Do I have to move out?

If the dwelling is as a practical matter totally unusable for residential purposes, the landlord may terminate the lease by giving written notice to the tenant at any time before repairs to the dwelling are completed. If the lease is so terminated, the tenant must vacate the dwelling.

Q. 4.12: My landlord told me to move out the next day because he wants the dwelling for his daughter who lost her house in the flood. He told me if I didn't move out, he'd change the locks. Do I have to move out?

No. The landlord must continue to honor the terms of the lease. The landlord may not change the locks to prevent the tenant from entering the dwelling.

Q. 4.13: 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 the 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.

Q. 4.14: How can I recover my personal property from the leased premises?

FEMA and federal security officials are going to be in control of when and how evacuees are allowed to return to their homes. Between evacuation 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.

4.5 FAQs – Can I Hold the Landlord or Previous Homeowner Responsible for Fraud or Negligence?

Q. 4.15: 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 injury or property damage. Despite this lease language, a court may hold the landlord responsible if the loss or damage was caused by the landlord's negligence. A tenant should first seek reimbursement for lost or damaged property by writing to the property manager. If that is not successful, you may have a claim for the loss of your personal property if you promptly reported the repair, took action to protect your property, and your landlord failed to timely repair. You should read your lease carefully to see what it provides.

Q. 4.16: 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.

4.6 FAQs – Insurance

Q. 4.17: All of my personal belongings were destroyed when the roof fell in on the place I rent. What help can I get from my insurance company?

If you had renter's insurance or homeowner's contents insurance at the time of the storm, contact your insurance company. If your situation is desperate, make sure you describe your situation to the insurance company. If the insurance company agrees that there is coverage, you can ask for advance payment to cover a part of your loss. Emergency assistance may be available from local Volunteer Agencies (i.e., Red Cross, Salvation Army, United Way).

Q. 4.18: What should I do if I do not have insurance on my personal belongings?

If your losses are not covered by insurance, you may be able to receive money for “Other than Housing Needs” that are the result of a disaster from FEMA to replace necessary items of personal property. “Other than Housing Needs” assistance is available for necessary expenses and serious needs caused by the disaster. You may also wish to contact the Red Cross, which may be able to help you.

Q. 4.19: If my personal belongings are lost or damaged as a result of the flood or other disaster, may I recover damages from my landlord under the landlord’s hazard insurance policy?

No. The landlord has no “insurable interest” in the tenant’s property, and therefore the landlord’s hazard insurance cannot (and does not) insure the tenant’s personal property.

However, if the damage or loss of the tenant’s property is due in whole or in part to the landlord’s negligence, the tenant may be able to sue the landlord and the loss may be covered by the landlord’s liability insurance carrier.

Q. 4.20: 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 usually will be limited to greater-than-normal wind conditions, such as from a disaster. You should carefully read your policy, talk to your insurance agent, and consult an attorney if you have questions.

Flood insurance may be purchased from the federal government under the National Flood Insurance Program (NFIP). You can buy policies from any state-licensed local agent if your community is participating in the NFIP. There is usually a 30-day grace period after purchasing flood coverage until it goes into effect. Visit <https://www.fema.gov/media-library/assets/documents/272>.

Q. 4.21: 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.

Q. 4.22: May I recover damages against my neighbor whose property damaged my property during the disaster?

The general rule is that a person is not liable for injuries or damages caused by a natural disaster or “Act of God” where there is no fault of negligence on the part of the owner whose property caused damage to others during the disaster. Therefore, your neighbor is liable only when he or she was negligent and such negligence was a cause of the damage. *See* 1 Am. Jur. 2d, Act of God, 11, 15; and 57 Am Jur. 2d, Negligence, 669.

Q. 4.23: What can I do with someone else’s property that the disaster carried onto my land?

When personal property is carried away by flood, wind, or explosion onto the land of another, such personal property still belongs to the original owner and the original owner may enter and retrieve it. If the landowner refuses to let the owner of the personal property enter, or if the landowner appropriates the property for the landowner’s own use, the owner of the personal property can sue the landowner for the value of the property. The landowner is an “involuntary bailee” and has the right to possession of the property against all others, except the true owner. The landowner may, if necessary, move the property to use the land, provided it is done in a reasonable manner. The landowner may not damage the property either intentionally or through gross negligence. *See* 1 Am. Jur. 2d, Abandoned, Lost, Etc., Property, 24-27.

Q. 4.24: May I sue the local, state, or federal government for damages caused by 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, firefighting, preservation of health, etc.

Q. 4.25: What about my commercial lease?

In commercial leases, Alabama common law and landlord tenant laws apply but the parties may alter them by the terms of the lease. The answer to this question is commonly addressed by the terms of the lease. Therefore, you must review the provisions, preferably with an attorney, if possible, to determine the scope of your rights and obligations.

Q. 4.26: Must I continue paying rent for my commercial lease space (office, retail, mini-storage, etc.) even though it has been rendered totally or partially unusable by the disaster?

The particular provisions of a commercial lease will control whether rent must be paid following a complete or partial destruction of the space. Many commercial leases do not require the landlord to make repairs. Unlike in residential leases, commercial landlords and tenants are not prohibited from contracting away the landlord’s duty to make repairs.

5.0 REAL AND PERSONAL PROPERTY

5.1 Overview

This section addresses some of the practical issues that homeowners, tenants, and business owners might ask concerning real and personal property.

5.2 Summary of the Law

Financial assistance may be available to homeowners to replace/repair their home destroyed in a presidentially declared disaster. If property is damaged or destroyed due to a natural disaster, an owner may be entitled to a property tax reduction. While FEMA does not offer assistance for businesses that are damaged, the Small Business Association may have low interest loans available to assist owners to repair their businesses.

A. Reduction in Property Taxes:

An owner may be entitled to a property tax reduction if personal or real property (including improvements) is damaged or destroyed, which decreases the property's assessed value.

- A property tax assessment is the process through which the assessed value of real and personal property is determined in order to calculate the property tax due.
- Residential property is generally appraised at its fair and reasonable market value, according to the best judgment of the assessor, the board of equalization, and agents of the Department of Revenue can form upon information, inspection, or otherwise, taking into consideration all elements or factors bearing on such value. Ala. Code § 40-7-15.
- If any property or improvements on the property are removed or destroyed or partially removed or destroyed during a tax year (October 1 through September 30), the owner can request a reduction of the property tax due to a decrease in the property's assessed value reduction. Ala. Code § 40-7-1(a).
- An owner should contact the appropriate county taxing official to submit a report of the damage or destruction as soon as possible but no later than December 31 for events occurring during the tax year ending September 30. Go to <https://revenue.alabama.gov/property-tax/county-officesappraisal-assessment-records/> to locate the property tax official for your county.
- Submit all evidence supporting the nature and extent of the damage and the amount your property was devalued.
- Upon receiving a report, the county tax official will send an appraiser to review the condition of your property and will determine whether to approve, modify, or deny your application or whether more information is necessary in order to make a determination.
- If you disagree with the decision, you can appeal to the county Board of Equalization.

However, even if you appeal, you must still pay the tax as assessed prior to January 1 to avoid a penalty assessment.

- Correction of assessments for nonexistent improvements: If an owner provides satisfactory proof that assessed improvements are nonexistent as of October 1 of the prior tax year, the tax assessor is authorized to correct the assessment by deleting the nonexistent improvements and the assessed value thereof. The owner must submit a report prior to March 1 next after the close of any ad valorem tax year. Ala. Code § 40-7-28; Ala. Code § 40-7-10.

B. Property Tax Reduction Unlikely for Destroyed or Damaged Crops, Livestock, Timber

Owners of agricultural and forest property (property used for raising and selling crops, horticulture, or livestock; dairying; and growing and selling timber and timber products) generally have such property assessed at its “current use” value rather than fair market value. Ala. Code § 40-8-1.

“Current use value” is the value of eligible taxable property based on the use being made of eligible property on October 1 of any taxable year in which no consideration is given to the prospective value such property might have if it were put to some other possible use. Ala. Code § 40-7-25.1.

The statute utilizes the standard value method of current use valuation, which uses formulas and would not be affect assessed values in the short term. Ala. Code § 40-7-25.1.

C. Duty to Report Improvements or Incur Penalties

When improvements to a structure or building are completed during the prior tax year, the owner must submit to the tax assessor a tax return between October 1 and prior to January 1 covering all such changes made subsequent to October 1 of the preceding tax year. Improvements partially completed on October 1 are reported and are assessed as incomplete for that tax year. Ala. Code § 40-7-1.

If the owner fails to report improvements, the owner will be assessed for the value of the improvements and may also be assessed a penalty (10 percent of the difference between the current assessed value as finally determined and the prior year’s assessed value). Ala. Code § 40-7-11.

D. Homestead Exemption

Homesteads, as defined by Alabama law, are exempt from all state ad valorem taxes. Homestead exemptions are not affected during any period the homestead is being repaired after being damaged by a natural disaster such as a tornado or hurricane. Ala. Code § 40-9-19 (a)(1) and (f).

E. Retaining Residential Property Classification

If a single-family dwelling is destroyed or damaged to the extent that the dwelling is

uninhabitable, the property retains its classification as residential property while the dwelling is being rebuilt or restored to an inhabitable state for a period to not exceed 24 months from the date of the destruction or damage. If the dwelling is not so rebuilt or restored within the 24-month period or the property is converted at any time to a use other than as the owner's single-family dwelling, the property loses its classification as residential property. Ala. Code § 40-8-1(i).

The owner may request a 24-month extension by submitting proof that the work necessary to rebuild or restore the destruction or damage could not be contracted or if contracted could not be completed within 24 months from the date of the destruction or damage. Ala. Code § 40-8-1(i).

Property classified as residential property will not lose its classification as residential property for a period of 24 months if the property is not used as the owner's single-family dwelling because the property is not inhabitable or is otherwise under repair after being damaged by a natural disaster such as a tornado or hurricane. Ala. Code § 40-8-1(j).

F. No Installment Payments for Ad Valorem Taxes

For most tax obligations, Alabama law permits taxing authorities the discretionary authority to accept tax payments in installments and to waive penalties under certain circumstances. Ala. Code § 40-2a-4(b) and (c). However, this does not apply to the assessment of ad valorem taxes on real or personal property. Ala. Code § 40-2a-2.

G. Motor Vehicle Property Tax

Check the Alabama Department of Revenue website for possible orders providing certain relief related to a disaster. (ex. extensions for obtaining registrations, paying property taxes on motor vehicles, or penalty waivers) issued due to a disaster. (On 1/5/2021, ADOR issued a 6-month extension for payment of property tax and other fees and penalties due to county office closures related to COVID-19.) <https://www.mvtrip.alabama.gov/Dashboard/Index>.

5.3 Replacing and Repairing Your Home

Financial assistance may be available to homeowners to replace/repair their home destroyed in a presidentially declared disaster. The goal is to help the homeowner with the cost of replacing their destroyed home.

A. Federal assistance through FEMA

By law, FEMA assistance cannot duplicate the assistance received from your insurance company, but you may receive assistance for items not covered by insurance. If your home was impacted by a major disaster, you should apply for assistance.

- Is your home located in a disaster area?

<https://www.disasterassistance.gov/>

<https://www.fema.gov/disaster/>

- FEMA individual disaster aid

<https://www.fema.gov/individual-disaster-assistance>

<https://www.fema.gov/individual-disaster-assistance.gov>

Obtain applications for FEMA assistance at <https://www.disasterassistance.gov>.

B. State Assistance

After past disasters, HUD provides states with Community Development Block Grant Disaster Recovery grants to help states supplement recovery assistance provided by other federal programs like FEMA. States may use these funds to provide relief to homeowners.

See hud.org.

5.4 Small Businesses Aid

FEMA does not offer assistance for small businesses impacted by presidentially-declared disasters. However, it does partner with the Small Business Administration (SBA), which offers low interest loans for business damages.

A charity can provide financial and other aid to small businesses in furtherance of that charity's tax-exempt purposes. Disaster relief may be provided to businesses to help individual business owners who are financially needy or otherwise distressed, combat community deterioration, or lessen the burdens of government. *See IRS Publication 3833.*

The IRS has provided examples to illustrate charitable assistance to businesses in the wake of a disaster. An example of aiding a needy or distressed business owner would be assisting a small business that has been so severely impaired by a disaster that the individual who owns the business is deprived of earning a livelihood. Combating community deterioration in the context of disaster relief may include providing funds to rebuild the infrastructure of a central business district severely damaged by a disaster or providing funds in the form of grants, low-cost loans, or equity investments in such business districts to ensure that businesses remain in the area.

<https://www.irs.gov/charities-non-profits/charitable-organizations/providing-disaster-relief-through-charitable-organizations-working-with-volunteers>

5.5 FAQs

Q. 5.1: My house was damaged, and I cannot live in it. Do I have to make my mortgage payments? What if I cannot pay my mortgage because of job or salary interruptions following the disaster?

The short answer is yes, you will have to make your regular mortgage payments even if your home is damaged to the extent that it is deemed uninhabitable. You should check with your mortgage lender; however, as they may be willing to make accommodations or allow a grace period for the payments following the disaster (although they may continue adding interest). The borrower needs to communicate with their lender and tell the lender about the specifics of his or her circumstances.

If you are unable to make your mortgage payments following a disaster and your mortgage is insured by the Federal Housing Administration (FHA) or the U.S. Department of Housing and Urban Development (HUD), you may be entitled to a foreclosure moratorium. In order to qualify, you must fall within one of the following three categories:

- (1) If you or your family live within the geographic boundaries of a Presidentially-declared disaster area, you are automatically covered by a 90-day foreclosure moratorium.
- (2) If you are a household member of someone who is deceased, missing, or injured directly due to the disaster, you qualify for a moratorium.
- (3) If your financial ability to pay your mortgage debt was directly or substantially affected by a disaster, you qualify for a moratorium.

Q. 5.2: What if I cannot make the payments? Can my lender foreclose on me?

The short answer is yes. Assuming you do not meet the requirements for a foreclosure moratorium discussed above, your lender will be entitled to foreclose in the event of a default.

Q. 5.3: 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?

Alabama is a nonjudicial foreclosure state. There are special provisions in some mortgage agreements called “power of sale” clauses, which authorize a lender to foreclose on a property without the necessity of taking the borrower to court in order to do so.

First and foremost, in the event you receive notice that your lender is going to foreclose on your home, you should contact your lender and see if they are willing to work with you based on your particular circumstances. If your mortgage is insured by the FHA or HUD or financed by the Rural Development Agency of the U.S. Department of Agriculture, you may be entitled to

reduced or suspended payments. You should contact those agencies as well to determine what, if any, relief is available to you.

https://www.hud.gov/program_offices/housing

<https://www.rd.usda.gov/files/3550-1appendix16.pdf>

If you feel behind in your mortgage payments but now have income you may want to consider filing a Chapter 13 bankruptcy. A Chapter 13 bankruptcy allows the debtor to propose a repayment plan to make installments to creditors over three to five years, depending on the debtor's monthly income. Filing a Chapter 13 bankruptcy automatically stays most collection actions against the debtor or their property. The automatic stay will apply to foreclosure proceedings against the debtor's home as soon as the Chapter 13 petition is filed. If you think you may want to file a Chapter 13 bankruptcy, you should consult an attorney. The following link provides more information on the basics of a Chapter 13 bankruptcy:

<https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-13-bankruptcy-basics>

Q. 5.4: Is the landlord responsible for the tenant's personal property (located on the rental property) that is damaged in a disaster?

Typically, no. Absent a lease provision to the contrary, the tenant is responsible for any damage to the tenant's personal property. Some lease contracts require tenants to purchase renter's insurance. Regardless of whether it is required under the terms of their lease, tenants are encouraged to purchase renter's insurance to cover their personal property located in a landlord's dwelling. For more information regarding insurance and/or landlord/tenant disputes, please refer to the sections of this manual addressing those topics.

Q. 5.5: Who is responsible for the value of my personal property that was stolen (looted) during a disaster?

Most rental insurance will cover losses of personal property resulting from theft during a disaster. In most circumstances, the landlord will not be responsible to the tenant for any such losses or criminal conduct by a third-party.

In the event you own your home, your homeowner's policy may cover the loss; however, this will depend on whether the specific item stolen was excluded from coverage under the policy.

Q. 5.6: Is there any program available for me to recover the value of my lost personal property?

If your personal property is not covered by insurance, you may be entitled to some assistance from FEMA called "Other Needs Assistance." This is financial assistance for necessary expenses and serious needs caused **directly** by the disaster, such as child-care expenses; medical and

dental expenses; funeral and burial expenses; damages to essential household items (e.g. room furnishings, appliances, clothes, tools required for your job, necessary educational materials such as computers, schoolbooks, supplies, etc.); fuel for the primary heat source; clean up items; damage to an essential vehicle; moving and storage expenses; and other expenses or needs as determined by FEMA. For additional resources on FEMA assistance see the following link:

[https://www.fema.gov/assistance/individual/housing#:~:text=Other%20Needs%20Assistance&text=Medical%20and%20dental%20expenses,\(computers%2C%20schoolbooks%2C%20supplies\)](https://www.fema.gov/assistance/individual/housing#:~:text=Other%20Needs%20Assistance&text=Medical%20and%20dental%20expenses,(computers%2C%20schoolbooks%2C%20supplies))

Q. 5.7: Can my property be condemned?

Yes. Your property can be condemned if it is deemed uninhabitable by the appropriate authority to make such a determination (state, local, or municipal).

Q. 5.8: If the property is condemned, will I be paid for it?

You will not be compensated by the governmental agency that condemns the property as condemnation due to the property being deemed uninhabitable is not considered a taking for “public necessity” or “public purpose.” Typically, the only sources of compensation under this scenario will be through insurance or FEMA relief. In the event your property is condemned, you should contact your insurer and/or FEMA to determine what, if any, compensation you may be entitled to.

Q. 5.9: How will I know if my property is safe to move back to?

Whether your property is deemed habitable is a determination made by the appropriate authority within your jurisdiction and/or FEMA.

Q. 5.10: My property has been damaged in a disaster (flood, tornado, explosion, hurricane). Do I still have to pay the same amount in taxes that I paid last year?

Absent a special exception, yes. Alabama law does not generally grant tax relief for property damaged in a disaster. However, temporary exceptions have been created in response to certain natural disasters. For example, in 2020, the Alabama Department of Revenue granted filing extensions for taxpayers in Baldwin, Escambia, and Mobile counties who were directly affected by Hurricane Sally.

Q. 5.11: What if my property was affected by a nonnatural disaster (ex: explosion)?

Alabama law does not have any exception to its property tax assessment and payment rules that would apply to property affected by non-natural disasters.

Q. 5.12: How are property taxes calculated on the property following the disaster?

Unless a special exception is granted, property taxes following a disaster are calculated in the same manner in which they are normally calculated. In Alabama, property tax is calculated using your property's assessed value. This is determined by multiplying the appraised value by the corresponding property classification, which is also known as the assessment rate. To determine your property's classification, consult the Alabama Department of Revenue's website (<https://revenue.alabama.gov/property-tax/property-tax-assessment/>). If you have questions regarding the calculation of your property taxes, you should contact the Alabama Department of Revenue located at:

50 N Ripley Street

Montgomery, AL 36104

Phone: (334) 242-1525

Q. 5.13: Who is responsible for repairs to rental property during a natural disaster?

Generally, the landlord is responsible for maintaining the rental property in a habitable condition and making any repairs following a natural disaster. You should contact your landlord immediately if the rental property is damaged and request all necessary repairs to restore the property to a habitable condition in writing. It is worth noting that Alabama tenants may *not* withhold rent or use "repair and deduct" when landlords fail to make important repairs that are necessary to keep the rental fit and habitable. (Ala. Code § 35-9A-164.). For more information regarding landlord/tenant issues, please refer to the sections of this manual addressing those topics.

Q. 5.14: A building on my property was repaired by a disaster recovery program after the disaster. The building is different from the original. Will this affect my taxes?

No, the taxes on the repaired property will be calculated in the same manner discussed above.

Q. 5.15: What kind of relief is available for individuals in the event of a large-scale disaster affecting multiple counties?

In certain large-scale disasters, the President may make a Federal Declaration of Major Disaster. In such a case, FEMA's Individuals and Households Program may provide relief to qualified households for expenses such as temporary housing and repair or replacement of owner-occupied homes. You may also be entitled to Other Needs Assistance, which provides for compensation for certain uninsured or underinsured disaster caused expenses or serious needs. To determine whether there has been a Declared Disaster in your area please visit <https://www.fema.gov/disasters/disaster-declarations#>.

6.0 EMPLOYER/EMPLOYEE ISSUES

6.1 Overview

This section is intended to provide guidance for assisting persons who have been temporarily or permanently unemployed or are facing other employment-related issues as a result of a disaster. 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 resources and efforts of state and local governments and voluntary relief organizations pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended 4 U.S.C. §5121 *et seq.*

6.2 Summary of the Law

A. Unemployment Compensation

When an individual has become unemployed due to a disaster, the first step is filing an unemployment insurance claim through the Alabama Department of Labor. Many people will be qualified for regular unemployment insurance benefits. Disaster Unemployment Assistance (DUA) provides financial assistance to individuals whose employment or self-employment has been lost or interrupted as a direct result of a major disaster as declared by the President of the United States, and are not eligible for regular Unemployment Insurance (UI) benefits under any State or federal law program (e.g., self-employed individuals or individuals unavailable to work due to an injury that is the direct result of the disaster). The DUA is a federal program that is administered by the states as agents of the federal government. 42 U.S.C. § 5177 (2000). Before an individual can be determined eligible for DUA, it must be established that the individual is ineligible for regular UI.

For information about filing unemployment claims in Alabama, contact:

Alabama Department of Labor
1.334.309.9000
1.334.956.4000
1.800.361.4524

-or-

labor.alabama.gov and refer to Alabama Code Title 25 Industrial Relations and Labor, Chapter 04 Unemployment Compensation. Refer to Appendix A.

Unemployment Benefits Expanded Due To COVID-19 Coronavirus Pandemic:

- Families First Coronavirus Response Act (FFCRA) 3/18/2020, provided additional flexibility for State unemployment insurance agencies and additional funding to respond to the COVID-19 Pandemic.
- Coronavirus Aid, Relief, and Economic Security Act (CARES ACT) 3/27/2020, expands States' abilities to provide unemployment insurance for many workers impacted by the COVID-19 Pandemic, including for workers who are not ordinarily eligible for unemployment benefits.

B. Continuation of Group Health Coverage

Due to a disaster, some individuals may lose their employer-provided group health plan coverage as a result of either a voluntary or an involuntary termination or a reduction in work hours that would render the employee unable to continue his or her coverage as an active employee. An employer may be required to extend COBRA continuation coverage to such an individual and his or her dependents ("Qualified Beneficiaries") previously covered under the employer's group health plan.¹ COBRA coverage is not available if the termination was for gross misconduct.

If applicable, COBRA requires an employer to extend to Qualified Beneficiaries the right to continue their health coverage under the same group health plan under which the beneficiaries were covered prior to their coverage loss.² 26 U.S.C. § 4980B(f)(2)(A). Group health plans include but are not limited to medical, dental, and vision plans. *See* 26 C.F.R. § 54.4980B-2, Q&A-1. Each individual Qualified Beneficiary may make a separate election with respect to coverage. *See id.* at §54.4980B-6, Q&A-6. For example, if an employee previously covered a spouse and a dependent child through family coverage under an employer-provided group health plan, either the spouse or the dependent child could separately elect COBRA continuation coverage under a single, rather than family, plan while the remaining members of the family waived coverage.

Generally, a Qualified Beneficiary may continue his or her coverage for up to 18 months. 26 U.S.C. § 4980B(f)(2)(B)(i). However, COBRA coverage can be very costly. An employer may charge up to 102 percent of the actual cost of providing the coverage to a similarly situated active employee (not just the contribution for coverage that the employee paid while actively employed). *Id.* at § 4980B(f)(2)(C). COBRA continuation coverage is not available in all situations. For example, COBRA generally only applies to private sector employers with at least 20 employees, governmental employers, and certain employee organizations. 26 C.F.R. §

¹ The death of the covered employee would also be a qualifying event that would trigger an employer's obligations under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"). 26 U.S.C. § 4980B(f)(3).

² If the employer no longer offers the same health plan under which the Qualified Beneficiary was covered, the Qualified Beneficiary may still be able to elect coverage under another group health plan maintained by the employer.

54.4980B-2, Q&A-4. Further, an employer is not required to offer COBRA coverage if it ceases providing any group health plan to its active employees. 26 U.S.C. § 4980B(f)(2)(B)(ii). For example, if an employer closes operations entirely and no longer offers any group health plans, a Qualified Beneficiary has no rights under COBRA to continuation coverage.

An individual who is eligible for COBRA coverage and wishes to elect COBRA coverage may want to contact the employer providing the group health plan coverage.

Employers are generally required to send a notice regarding COBRA rights to the last known mailing address of the Qualified Beneficiary. Therefore, those who have been dislocated by the disaster may not promptly receive notice from their employers regarding COBRA continuation coverage. Qualified Beneficiaries only have 60 days in which to elect COBRA coverage from the later of the date of the COBRA notice or the loss of coverage. *Id.* at § 4980B(f)(5). For further information, see “An Employee’s Guide to Health Benefits Under COBRA,” available at <https://www.dol.gov/.../publications/an-employees-guide-to-health-benefits-under-cobra.pdf> .

C. Employer’s Wage Payment Obligations

Under the federal Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, employees who are not exempt from the minimum wage and overtime provisions of the statute need only be paid for time actually worked. Employees who are exempt, however, must be paid their full salary if the business shuts down for less than a full work week or if the employer does not have work available for the employee for the full work week. If the employer makes improper deductions from pay for time not worked, the employee’s exempt status may be lost. When the business is open and work is available, deductions from an exempt employee’s salary may be made if the employee is absent from work for one or more full days for personal reasons. In addition, a full day’s absence may be deducted if it occurred because of sickness or disability, as long as the deductions are made pursuant to a bona fide sick or disability leave plan, policy, or practice. *See* 29 C.F.R. § 541.602. For further information, see “Employee Rights Under the Fair Labor Standards Act” available at <http://www.dol.gov/whd/regs/compliance/posters/minwagep.pdf>.

Alabama follows the federal wage and hour regulations and has no separate State wage and hour laws. Refer to the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* For more information about federal wage and hour laws, contact:

U.S. Wage and Hour Board
1.866.487.9243 or
www.dol.gov

D. Employer Notice Requirements

Under certain circumstances, employees who lose employment as a result of a plant closing or mass layoff are entitled to 60 days advance notice under the federal Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C. 2101 *et seq.* The WARN Act notice requirement applies only to employers with at least 100 employees. The employer must give

written notice to the bargaining representative of affected union employees and to unrepresented individual workers who may reasonably be expected to experience an employment loss. However, when the plant closing or mass layoff is the direct result of a natural disaster, such as a flood, earthquake, drought or storm, the employer is required only to give as much notice as is practicable.

E. Prohibited Employment Discrimination

Alabama is known as an employment-at-will state. Unless an employee is hired under a written contract for a specific term, the employer and the employee are free to terminate the employment relationship at any time, for any reason. Certain local, State, and federal laws, however, prohibit discrimination in hiring, discipline, discharge, and other terms and conditions of employment on the basis of an employee's race, color, national origin, sex, pregnancy, religion, disability, or genetic information. Employees who leave work to participate in a general public evacuation ordered under an emergency evacuation order are not a protected category under Alabama law.

For further information on the protections afforded under Federal law, see "Equal Employment Opportunity is the Law," available at

http://www.eeoc.gov/employers/upload/poster_screen_reader_optimized.pdf.

In addition, the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. §§ 4301-4333, makes it unlawful for an employer to deny initial employment, reemployment, promotion, or any benefit of employment to a person who is obligated to perform in a uniformed service, including the Reserves and National Guard. This includes a call to active duty as a result of a national emergency. For further information, see "Your Rights Under USERRA" available at:

http://www.dol.gov/vets/programs/userra/userra_private.pdf.

F. Unpaid Leave Entitlement

In addition to paid leave that may be available under an employer's vacation or sick leave policy, the federal Family and Medical Leave Act (FMLA) requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for certain family and medical reasons. See 29 U.S.C. §§ 2601, *et seq.*; 29 C.F.R. Part 825, *et seq.* Leave is available in part to cover an employee's own serious health condition that renders the employee unable to perform the employee's job, and to care for the employee's spouse, son or daughter, or parent who has a serious health condition. Employees are eligible if they have worked for their employer for at least one year, and for 1,250 hours over the previous 12 months, and if their employer has at least 50 employees within 75 miles. The FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances. For the duration of FMLA leave, the employer must maintain the employee's health coverage under any group health plan.

Pursuant to the statute, substitution of paid leave is allowed. 29 U.S.C. § 2612 (d)(2). Employees may take, or employers may require employees to use paid vacation, personal, family, or medical sick leave concurrently with FMLA. However, the Department of Labor updated the regulations

under the FMLA in 2008, which now restrict the substitution of paid leave. Under the new 29 C.F.R. § 825.207, employers can require employees to meet all of the normal requirements of paid leave policies before permitting substitution. For example, if a policy requires that vacation be taken in full day increments, an employer can deny substitution for an employee’s one-half day FMLA leave. Similarly, if vacation time cannot be taken during a particular month, substitution could be denied during that time period. For more information, visit <http://www.dol.gov/whd/fmla/index.htm>.

G. Other Employer Assistance Programs

Employers may establish one or more of the following programs for employees who are adversely affected by a federally-declared disaster or emergency. Affected employees should check with their employers regarding the availability of any of these programs.

- Qualified disaster relief payments. Employers may pay or reimburse affected employees for reasonable and necessary expenses attributable to a major disaster, including: (i) personal, family, living, or funeral expenses and (ii) costs to repair a personal residence or replace its contents. Such payments are not included in the employee’s income. 26 U.S.C. § 139.
- Leave Sharing Programs. The employer may establish a “leave sharing bank” that allows employees to donate their accrued leave to an employer-sponsored leave bank for use by other employees who have exhausted their paid time off and are undergoing severe hardship, requiring the employees to be absent from work for additional time. The paid leave received from the leave bank is treated as a taxable wage at the employee’s normal rate of compensation. IRS Notice 2006-59.
- Retirement Plans. Congress sometimes takes action to allow employers to increase the loan limits for participants affected by major disasters such as hurricanes. Qualified individuals generally have a primary residence that was located in the disaster area on the applicable date and sustained an economic loss as a result. Congress will specify a period in which the loan is eligible for relief, which typically begins immediately after the disaster and ends on December 31 of the next year. If the due date of the loan or any repayment date occurred during this period, the due date is delayed for one year. *See* Pub. L. 115-63, § 502(c) for Hurricanes Harvey, Irma and Maria in 2017.
- Paycheck Protection Program (PPP). Employers may apply for a Small Business Loan to help pay employee wages during the Coronavirus (COVID-19) crisis.

6.3 FAQs

Q. 6.1: What is unemployment insurance?

Unemployment insurance (UI) is a program designed to provide temporary financial assistance to workers who are unemployed through no fault of their own. UI benefits are paid as a matter of past employment and legal entitlement, and not on the basis of need.

Q. 6.2: How do I qualify for unemployment insurance benefits?

You must meet all of the following requirements to qualify for benefits:

1. must have earned enough wages in your base period. The base period is the first four of the last five completed calendar quarters before you filed your claim,
2. must be unemployed through no fault of your own,
3. must be physically able and available to work, and
4. must be actively seeking work.

Q. 6.3: What is Disaster Unemployment Assistance, or DUA?

Disaster Unemployment Assistance (DUA) provides financial assistance to individuals whose employment or self-employment has been lost or interrupted as a direct result of a major disaster as declared by the President of the United States, and are not eligible for regular UI benefits under any State or federal law program (e.g., self-employed individuals or individuals unavailable to work due to an injury that is the direct result of the disaster). While DUA is a federal program, it is administered by states as agents of the federal government. 42 U.S.C. § 5177 (2000).

Q. 6.4: How do I qualify for Disaster Unemployment Assistance?

Disaster Unemployment Assistance may be available to certain unemployed U.S. nationals and qualified aliens who:

- Have applied for and used all regular unemployment benefits from any state, or do not qualify for unemployment benefits;
- Worked or were self-employed or were scheduled to begin work or self-employment in the disaster area;
- Can no longer work or perform services because of physical damage or destruction to the place of employment as a direct result of the disaster;

- Establish that the work or self-employment which they can no longer perform was their primary source of income;
- Cannot perform work or self-employment because of an injury as a direct result of the disaster; or
- Became the breadwinner or major support of a household because of the death of the head of the household, as a result of the disaster.

Q. 6.5: How do I file for Unemployment Insurance (UI) or Disaster Unemployment Assistance (DUA)?

To file a claim for unemployment insurance or disaster unemployment assistance, please consider the following:

You must file for regular UI benefits before filing for DUA. You may file for regular unemployment benefits online at <https://labor.alabama.gov/unemployment.aspx>

If you cannot file online or have questions, call UI Customer Service at 1-866-234-5382 (select option 2).

You will need your Social Security number, a copy of your most recent federal income tax forms or check stubs, or documentation to support that you were working or self-employed when the disaster occurred. To receive DUA benefits, all required documentation must be submitted within 21 days from the day the DUA application is filed. Failure to submit the required documentation within the 21-day time period may result in denial of eligibility for DUA.

Q. 6.6: How do I get proof of prior wages or earnings?

To obtain proof from the Internal Revenue Service (IRS) of prior income/earnings, complete IRS Form 4506-T and send to the IRS. Write the appropriate disaster designation, such as “DISASTER IKE,” in red letters across the top of the forms to expedite processing. Fax or mail the form to the appropriate IRS Campus found in the instructions on the form. The anticipated response time is 24-48 hours from IRS receipt of the fax. For additional assistance from the IRS, call the IRS Disaster Assistance Hotline at (866) 562-5227.

Q. 6.7: Are UI benefits taxable?

Any UI benefits you receive are taxable income. At the time you file your claim you may elect to have the Alabama Department of Labor withhold state and/or federal tax on the benefits you receive. You will be issued a Form 1099-G at the end of the calendar year showing the amount of benefits paid to you, as well as any taxes withheld at the time the benefits were paid. The amount on the 1099-G is not reduced by any repayments you may have made for overpaid benefits. Therefore, if you repaid any benefits, you must maintain your own record of payment,

such as reimbursement receipts or canceled check notices to make adjustments to your taxable income and as documentation for the federal Internal Revenue Service and State Tax Office when you file your tax returns.

Q. 6.8: What DUA benefits are available?

Disaster Unemployment Assistance is available for weeks of unemployment beginning with the first Sunday following the date the major disaster is declared by the President and for up to 26 weeks after the major disaster, as long as the unemployment continues to be a result of the major disaster. The effective date of your eligibility will determine the number of weeks that you are eligible to receive benefits. The maximum weekly DUA benefit amount is determined using the same formula used for regular UI benefits.

Q. 6.9: What is an employer's obligation with respect to a group health plan?

In certain situations, COBRA may require an employer to extend COBRA continuation coverage under a group health plan to an employee and his or her dependents ("Qualified Beneficiaries") following coverage loss due to certain qualifying events. Qualifying events include loss of coverage due to the following events:

- Most voluntary or involuntary terminations,
- A reduction in hours triggering a coverage loss, or
- The death of the covered employee.

If applicable, COBRA generally requires the employer to extend coverage under the group health plan for a period of 18 months. However, the employer may charge the Qualified Beneficiaries up to 102 percent of the cost of providing coverage under the group health plan to a similarly-situated active employee.

COBRA coverage is not required in all cases. Certain employers, including small employers, may be exempt from COBRA. Further, if an employer terminates all group health plans for active employees, the employer no longer has to extend COBRA coverage to any Qualified Beneficiaries. For more detailed information, go to: <https://www.dol.gov/.../publications/an-employees-guide-to-health-benefits-under-cobra.pdf>.

Q. 6.10: If the office must close temporarily, are there alternatives to a layoff?

In some circumstances, it may make sense for an employer to place its employees on unpaid administrative leave status while the office regroups. If the employer's benefits plans permit continuation of coverage during such leave, employees may be able to maintain coverage. Employers should check the applicable plan documents before making this decision.

Q. 6.11: Can my employment be terminated without notice or cause?

Unless you have a written agreement (contract) for employment for a specified period of time, your employment is considered at-will and can be terminated by you or your employer at any time, for any reason, with or without notice.

Q. 6.12: Are there any legal restrictions against firing, suspending, or disciplining employees?

Various local, State, and federal laws prohibit discrimination in hiring, discipline, discharge and other terms and conditions of employment on the basis of an employee's race, color, national origin, sex, pregnancy, religion, disability, or genetic information. Alabama does not offer specific protections to employees who leave work to participate in a general public evacuation ordered under an emergency evacuation order are not a protected category under Alabama law. However, federal law grants certain rights to, and prohibits discrimination against, a person who is obligated to perform in a uniformed service, including the Reserves and National Guard. This includes a call to active duty as a result of a national emergency.

Q. 6.13: Am I entitled to take leave to deal with my own or a family member's serious health problem?

Your employer may have a sick leave or vacation policy that entitles you to a period of paid leave. In addition, the federal Family and Medical Leave Act (FMLA) may provide up to 12 weeks of unpaid leave for certain family and medical reasons. The FMLA applies to employers with at least 50 employees. To be eligible, you must have worked for your employer for at least one year, and for 1,250 hours over the previous 12 months. You can take leave for a serious health condition that prevents you from performing your job, or to care for a spouse, child, or parent who has a serious health condition. You can continue your existing group health coverage and are entitled to reinstatement at the end of the leave. You will need to let your employer know that you or a family member has a serious health condition for which you require leave.

Q. 6.14: I had to evacuate and need to get my paycheck. What do I do?

If your wages are not direct deposited in your bank account, make sure your employer has your current address. Direct your employer to send your paycheck to you by registered mail. If you want to have someone receive or pick it up on your behalf, your employer will need your written authorization to send or give the paycheck to that person.

Q. 6.15: What laws protect me if I am working in a disaster area?

State and federal laws, including workers compensation and minimum wage and overtime cover workers even during a disaster or after. Record your hours daily and take photos of the worksite that identify the location. If you are not paid as promised or for all hours worked, or your check bounces, the U.S. Department of Labor Wage and Hour Division's number is 1-866-487-9243. As a paid worker in a disaster area, you may need to protect yourself from dangerous conditions.

The U.S. Department of Labor Occupational Safety and Health Administration's (OSHA) number is 1-800-321-6742. Spanish speakers are available on both lines.

7.0 SOCIAL SECURITY, BANKING, AND FINANCIAL ISSUES

7.1 Overview

This section addresses Social Security benefits, banking, and taxes.

7.2 Summary of the Law – Social Security Benefits

If you did not receive your regularly scheduled payment from Social Security because of a disaster, you can go to any open Social Security office and request an emergency payment. To find the nearest Social Security office call 1-800-772-1213 (TTY 1-800-325-0778). You can also visit the Social Security website at www.ssa.gov or <https://www.ssa.gov/agency/emergency>. If you need a rapid turnaround, contacting your local office can be more efficient.

Effective March 1, 2013, with very few exceptions, the Social Security Administration required that you sign up for their Direct Deposit service. With Direct Deposit, you no longer receive a check in the mail. Instead, your money is deposited for you directly into your bank, savings and loan, or credit union account no matter what happens to interrupt mail service. If you already are receiving benefits, you can create a [my Social Security](#) account and start or change Direct Deposit online. You also can sign up at your bank, credit union, or savings and loan.

Alternatively, you could have a Direct Express[®] debit card that has your benefits added to it. A number of other federal benefits can be deposited on Direct Express[®] cards. For all questions related to the Direct Express[®] card, cardholders should see <https://www.usdirectexpress.com/> or call:

- Customer Service: 1-888-741-1115
- Hearing impaired: 1-866-569-0447
- International: 1-765-778-6290 (Collect)

Additionally, if the applicant is blind, over the age of 65, or disabled and cannot perform any kind of work, the applicant should apply for benefits at the nearest Social Security office. You can also 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 earnings and medical evidence of disability, it will send a written decision. If you are denied and you think you are eligible, you should file a request for reconsideration within 60 days of the date of the initial decision. If you are denied again, you should request a hearing and contact an attorney including legal aid.

You may also be eligible for other kinds of Social Security or SSI benefits, on your Social Security account, or on the account of another if you want to retire, or you are an aged or disabled widow or widower, or are the dependent family member of a disabled, retired or

deceased worker. If you think you are eligible for any of these benefits, you should contact the Social Security Administration and apply.

7.3 Summary of the Law – Tax Relief

The IRS will waive the usual fees and expedite requests for copies of previously filed tax returns for affected taxpayers. Taxpayers should put the assigned Disaster Designation, such as “Disaster No. 4223” in red ink at the top of Form 4506, Request for Copy of Tax Return, or Form 4506-T, Request for Transcript of Tax Return, as appropriate, and submit it to the IRS. Other transcripts, such as account and wage and income information, can be requested free of charge by calling 1-800-908-9946 or online at <http://www.irs.gov/Individuals/Order-a-Transcript>. Tax return transcripts for the last three tax years are also available free of charge upon request.

Taxpayers who are adversely affected by a disaster may qualify for tax relief from the Internal Revenue Service (IRS), including the postponement of tax filing and payment deadlines.

IRS computer systems automatically identify taxpayers located in the covered areas and apply automatic filing and payment relief. If you reside or have a business outside the covered area, you must call the IRS disaster hotline at 1-866-562-5227 to request tax relief.

People affected by a disaster who need help with tax matters can call 1-866-562- 5227 for assistance. Additional information for affected taxpayers is provided at www.irs.gov.

7.4 FAQs

Q. 7.1: Who can I contact for information?

The federal banking regulators realize that customers with limited access to a working telephone or the internet may have greater difficulty obtaining financial information. Customers with access to a working telephone who bank with a bank can contact the Federal Deposit Insurance Corporation (FDIC) toll-free at 1-877-ASK-FDIC or 1-877-275-3342 or TDD 800-925-4618 for information about accessing their bank accounts, lost records, ATM cards, direct deposits or how to reach their bank. This hotline operates from 8:00 am to 8:00 pm Eastern Time Monday through Friday and 9:00 am to 5:00 pm on Saturday and Sunday (excluding federal holidays).

Customers who bank with a credit union can contact the National Credit Union Association (NCUA) toll-free at 1-800-755-1030 for information about their credit union.

Q. 7.2: The local banks and credit unions 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 or credit union you are dealing with to

call your bank or credit union to determine your account balance. We encourage you to work with your bank or credit union to provide the necessary information to the bank or credit union you are now dealing with so you can conduct banking transactions. However, you may have no other alternative but to open a new banking account in the area in which you have relocated.

Q. 7.3: 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 or credit union?

There may be delays in the processing of transactions, including direct deposits, as banks and credit unions activate back up plans. The banks and credit unions will process the transactions once the plans are implemented. Talk to your bank or credit union 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.

Q. 7.4: 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 or credit union's verification system is not working. You may consider other options, such as cashing a check in your immediate area or using a credit card. You may also contact one of the emergency service organizations, such as FEMA at www.fema.gov or the Red Cross at www.redcross.org and request assistance.

Q. 7.5: ATM fees are piling up, why aren't the banks or credit unions waiving these fees?

Please contact your bank or credit union and explain your situation. The FDIC and NCUA strongly encourage banks and credit unions to waive these fees for those hardest hit by disasters.

Q. 7.6: I can't reach my bank or credit union by phone or internet, what should I do?

If your bank or credit union 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 review information from the FDIC at www.fdic.gov/news/disaster/consumers.html and contact one of the emergency service organizations, such as FEMA at www.fema.gov or the Red Cross at www.redcross.org and request assistance.

Q. 7.7: I am no longer working due to the disaster 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?

The FDIC and NCUA strongly encourage banks and credit unions to be understanding during times of crisis. Among what regulators are encouraging banks and credit unions to do is to allow customers to skip loan payments with no adverse consequences for the borrower, extend loan repayment terms, restructure existing loans, and ease the terms for new loans to take into account

new sets of circumstances. Before skipping payments or changing the terms of the loan, contact your bank or credit union.

Q. 7.8: How will I get my Social Security check?

Contact the Social Security Administration (SSA) or go to an open Social Security office for instructions or information regarding SSA assistance programs. To find an open office, call the SSA at 1-800-772-1213 or TDD at 1-800-325-0778 between 7:00 a.m. and 7:00 p.m. Monday through Friday. Information from the SSA is available at: <http://www.ssa.gov/emergency/>.

Q. 7.9: I need longer term financing until insurance checks come in and I can find another job, will banks or credit unions help?

We understand that not all banks and credit unions provide unsecured loans, but the FDIC and NCUA has encouraged banks and credit unions to consider working constructively with affected consumers to meet their lending needs, making loans on a short-term basis to help consumers.

Q. 7.10: What about the contents of my safe deposit box? Does FDIC and NCUA insurance cover safe deposit boxes?

No, deposit insurance does not cover safe deposit contents. Most safe deposit boxes are held in the bank or credit union vault, which are often fireproof and waterproof. If possible, contact the branch or office where your box was located to determine the condition of your box.

Q. 7.11: I am worried about ID Theft since my home was severely damaged during the storm, and 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.

If you have reason to believe you may be a victim of ID theft, you may place a fraud alert by contacting the fraud departments of either of the major credit bureaus:

- Equifax at 1-800-525-6285 or www.equifax.com;
- TransUnion at 1-800-680-7289 or www.transunion.com; or
- Experian at: 1-888-EXPERIAN or 1-888-397-3742; www.experian.com.

In addition, people who think their personal information has been misused should contact the local police. They also can contact and file a complaint with the Federal Trade Commission

(FTC) by phone at 877-IDTHEFT or 1-877-438-4338 or TDD 1-866-653-4261, or on the Internet at <http://www.ftc.gov/idtheft>.

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 giving personal information or by stealing sensitive mail or documents from homes and offices.

Q. 7.12: What happens if my bank or credit union has lost my records?

Be assured that banks and credit unions are required to have extensive contingency plans for all types of disruptions to operations, including natural disasters. Banks and credit unions 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.

Q. 7.13: If my local bank or credit union was destroyed, is my money still insured?

Yes, your money is still insured by FDIC or NCUA. Deposits with a FDIC insured bank or savings institution will continue to be protected up to \$250,000. Information about FDIC deposit insurance is available at www.fdic.gov/deposit/deposits/faq.html. Information about NCUA deposit insurance is available at <https://www.ncua.gov/files/press-releases-news/NCUAHowYourAcctInsured.pdf>. However, you should keep any financial records that you have in order to help reconstruct your accounts.

Q. 7.14: How can consumers deposit or cash 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 that arrangements will be made with neighboring institutions to handle these special consumer needs.

Q. 7.15: 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.

Q. 7.16: Is my bank or credit union safe? Do you believe the affected banks and credit unions will survive?

We are not aware of any bank or credit union that has failed 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 NCUA, which protects credit union depositors. These depositors can rest assured that deposit insurance is in full force.

Q. 7.17: Merchants will not accept my checks because my bank or credit union is not operational and they cannot verify my account balance. What should I do?

If a merchant cannot verify that you have an available balance, it is unlikely that they will accept your check. Until your bank or credit union is operational again, we can only suggest that you contact one of the emergency service organizations, such as FEMA at www.fema.gov , or the Red Cross at www.redcross.org .

8.0 CONSUMER PROTECTION ISSUES

8.1 Overview

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

IMPORTANT NOTE: The information contained in this section is designed to help a volunteer attorney provide preliminary guidance to victims of consumer fraud or those with debtor/creditor problems in Alabama. In most instances, the matters should be referred to a full-service provider of legal help (many of these entities are included in the referral section at the end of this manual).

8.2 Summary of the Law

A. Alabama Deceptive Trade Practice Act – Alabama Code § 8-19-1 et seq.

Alabama Code § 8-19-1 provides for the Alabama Deceptive Trade Practices Act. This law states, as its legislative intent under § 8-19-2, that “the public health, welfare and interest require a strong and effective consumer protection program to protect the interest of both the consuming public and legitimate business person.”

This law sets forth twenty-six separate deceptive trade practices acts and has a catchall that provides for redress for “engaging in any other unconscionable, false, misleading or deceptive act or practice in the conduct of trade or commerce.” Alabama law, in § 8-19-10, allows a private right of action and provides that someone who commits the act will be responsible for monetary damages to another person for “any actual damages sustained by such consumer or person, or the sum of \$100, whichever is greater, or up to three times any actual damages, in the court’s discretion.”

The law also provides that, in a successful action to enforce this law, the costs of the action together with reasonable attorney’s fees will be paid. If someone wants to sue under this Alabama law, then they must first send a demand letter at least fifteen days prior to the filing of a lawsuit, identifying the claimant and reasonably describing the unfair or deceptive act or practice relied upon and the injury suffered.

This letter is an absolute requirement under this law for any business that has a place of business or keeps assets within the state of Alabama. The letter is not required to be sent to a business that does not have a place of business in Alabama or does not keep assets within the State. It is best, however, is to always send a letter to any entity whether they are located in Alabama or not prior to filing a lawsuit under this section.

Price Gouging

The Alabama Unconscionable Pricing Act prohibits “Price Gouging.” Alabama Code 8-31-1 et seq. Specifically, the law makes it illegal for anyone to raise prices on commodities or lodging by more than 25 percent during the declared state of emergency. A state of emergency is declared by the Governor pursuant to Alabama Code § 31-9-8.

To calculate violations of Alabama’s price gouging law, figure the price charged for each of the previous 30 days. Add the 30 daily prices, divide by 30, and multiply the price by .25, or 25 percent, to figure the maximum price increase allowed for any one day. The exception is if a wholesale price increases by more than 25 percent and merchants have no choice but to pass along the price increase.

The fine for violating Alabama’s price gouging law can be up to \$1,000 per incident and up to \$25,000 in total. Those who willfully and continually violate the law can be banned from doing business in Alabama.

Consumers and officials can report concerns of alleged fraud or illegal price gouging on the attorney general’s website at <https://www.alabamaag.gov/consumercomplaint>. Complaints can also be reported by calling 1-800-392-5658 or writing to Alabama Attorney General’s Office, 501 Washington Ave., Montgomery, Alabama 36130. The Act does not create a private cause of action for those affected.

Roof Repair Contracts

Roofing contracts receive special protection under Alabama law. A person who has entered into a written contract with a residential roofing contractor who has contracted to be paid from the proceeds of a property and casualty insurance policy may cancel the contract if the insurance company says it will not cover all or part of the contract repairs. Essentially, if a homeowner enters into a contract with a roofing company to make repairs after a disaster, the homeowner might be able to back out of the contract within 5 days if the insurance company says it will not cover the repairs. Alabama Code § 8-36-2. If the residential roofing contractor has performed any emergency services, acknowledged by the insured in writing to be necessary to prevent damage to the premises, the residential roofing contractor is entitled to collect the amount due for the emergency services.

B. Alabama Home Solicitation Sales Law

After a disaster, businesses frequently solicit customers at their homes. It is important to know when a sale constitutes a home solicitation because special laws cover this kind of sale. Alabama Code § 5-19-12 regulates the sale of goods and services by home solicitation.

A “home solicitation sale” means a sale in which the purchase price is payable in installments and the seller solicits the sale in person at a home. Alabama law requires specific language to be included in home solicitation contracts. A buyer has the right to cancel a home solicitation contract until midnight of the third business day after the day on which the buyer signs the

agreement. If a seller fails to give a buyer notice of the right to cancel the contract, the contract is void. Requirements of the law include:

- Home solicitation contracts must be in writing and be completed prior to being signed. The buyer has a right to cancel a home solicitation sales agreement until 12:00 midnight of the third business day after the day on which the buyer signs the agreement.
- Notice of cancellation becomes effective when delivered to the seller or placed in the mail postage prepaid.
- The buyer must return the merchandise unused, in the same condition as received by the buyer.

C. FTC Cooling-Off Rule for Sales Made at Homes

The Federal Trade Commission’s “Cooling-Off Rule” (Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations; 16 CFR Part 429) also applies to sales at the buyer’s home, workplace or dormitory, or at facilities rented by the seller on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds and restaurants. The Cooling-Off Rule applies even when a salesperson is invited to make a presentation in the home. Under the Cooling-Off Rule, the salesperson must tell the consumer about cancellation rights at the time of sale. The salesperson also must give the consumer two copies of a cancellation form (one to keep and one to send) and a copy of the contract or receipt. The contract or receipt should be dated, show the name and address of the seller, and explain the right to cancel. The contract or receipt must be in the same language that’s used in the sales presentation. The Cooling-Off Rule does not cover sales that are:

- Under \$25,
- For goods or services not primarily intended for personal, family, or household purposes (the Rule applies to courses of instruction or training),
- Made entirely by mail or telephone,
- The result of prior negotiations at the seller’s permanent business location where the goods are sold regularly,
- Needed to meet an emergency,
- Made as part of a request for the seller to do repairs or maintenance on personal property (purchases made beyond the maintenance or repair request are covered).

Obviously some of these exemptions may come into play in disaster related home solicitations. Also exempt from the Federal Cooling-Off Rule are sales that involve:

- Selling real estate, insurance, or securities;
- Automobiles, vans, trucks, or other motor vehicles sold at temporary locations, provided the seller has at least one permanent place of business;
- Arts or crafts sold at fairs or locations such as shopping malls, civic centers, and schools.

For additional information see the FTC’s website: <https://www.consumer.ftc.gov/articles/0176-buyers-remorse-when-ftcs-cooling-rule-may-help>

D. Fair Credit Billing Act

If a consumer paid for a purchase with a credit card, and a billing dispute arises about the purchase (for example, if the merchandise shipped was not what was ordered), the consumer can notify the credit card company that he wants to dispute the purchase. A sample dispute letter can be found at the following link, under “Exercise Your Rights”:

<https://www.consumer.ftc.gov/articles/0219-disputing-credit-card-charges>. Under the Fair Credit Billing Act, 15 U.S.C. § 1666 *et seq.*, the credit card company must acknowledge the dispute in writing within 30 days after receiving it, unless the problem has been resolved. The credit card company must resolve the dispute within two billing cycles (but not more than 90 days) after receiving written notice from the consumer. The consumer may withhold payment of the amount in dispute until the dispute is resolved. (The consumer is still required to pay any part of the bill that is not in dispute.) To protect rights under the Fair Credit Billing Act, the consumer must send a written notice about the problem to the credit card company at the address given for “billing inquiries,” specified on the billing statement within sixty days after the first bill containing the disputed amount is mailed.

Note: Disputes about the quality of goods and services are not “billing errors,” so the dispute procedure does not apply. However, if a consumer buys unsatisfactory goods or services with a credit or charge card or the 60-day period has expired, the consumer may have other rights under the Act. For questions about the Fair Credit Billing Act, visit:

<https://www.consumer.ftc.gov/articles/0219-disputing-credit-card-charges>

E. Credit Reporting

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.

Credit reporting is governed by the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, 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. Information on this

area of law can be found at <https://www.ftc.gov/news-events/media-resources/consumer-finance/credit-reporting>

F. Credit Counselors and Credit Repair Companies

Consumers should also be wary of companies that offer debt settlement services or to eliminate debt. Debt settlement is when a company negotiates with creditors to reduce or eliminate the amount of debt owed. These companies often advise consumers to stop making payments to their creditors until a negotiated settlement has been reached, and to instead make payments to the debt settlement company. Credit card companies are under no obligation to reduce the total amount of debt a consumer owes; so, if a consumer stops sending them monthly payments and no negotiation is reached, the balance will be even higher than it originally was – thanks to interest and late fees – and the consumer’s credit rating could take a further hit. Such companies may also charge high fees simply in order to do business with them and to enter into settlements that the consumer could reach themselves. Consumers should engage with these companies with extreme caution.

8.3 Helpful Agencies

Alabama Attorney General’s Office, Consumer Interest Division

501 Washington Ave.
Montgomery, Alabama 36130
Phone: 1-800-392-5658
<https://www.alabamaag.gov/>

Federal Trade Commission

<https://www.consumer.ftc.gov/>

Better Business Bureau – North Alabama

210 Exchange Place
Suite A
Huntsville, AL 35806
Phone: (256) 533-1640
Fax: (256) 533-1177
<https://www.bbb.org/northern-alabama/>

Better Business Bureau - Central and South Alabama

2101 Highland Ave S
Ste 410
Birmingham, AL 35205-4030
Phone: (205) 558-2222
Fax: (205) 558-2239
info@csra.bbb.org

Better Business Bureau - Chattahoochee Valley (Including East Alabama)

233 12th Street

Suite 911-B

Columbus, GA 31902

Phone: (706) 324-0712

Fax: (706) 324-2181

<https://www.bbb.org/local-bbb/better-business-bureau-serving-the-fall-line-corridor-inc>

8.4 FAQs

Q. 8.1: What can I do to protect myself from unscrupulous contractors?

Following a weather-related emergency, scammers often show up offering to help with tree and home repair work.

- Do not give individuals money up-front based upon the promise that they will be back to do the work.
- Before contracting for any services, the consumer should:
 - Verify licensing with appropriate regulatory agencies including the Board of Contractors at <https://genconbd.alabama.gov>;
 - 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;
 - Get contracts in writing. Read all contracts or service agreements before signing;
- Do not make final payment until the work is finished and you are satisfied with the results; and
- File complaints with appropriate regulatory agencies if confronted with potential fraud or abuse.

Contact the Alabama Attorney General or a local Better Business Bureau if someone calls with what the consumer feels is a scam. An early alert can prevent others from fraud. The phone number for the Alabama Attorney General's Office, Consumer Interest Division is (1-800-392-5658). <https://www.alabamaag.gov/consumercomplaint>.

Q. 8.2: Should I enter into a lien contract to pay for home repairs?

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

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

The salesperson or contractor then induces the homeowner to sign a contract and a deed to secure debt 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 consumer should be aware that the lien created by the contract, usually secured with a “deed to secure debt,” can be enforced by foreclosure. If the homeowner misses only one payment, the creditor may foreclose and sell the home without ever going to court. The possible result is that the homeowner not only fails to have necessary repair work done, but loses his/her home through foreclosure.

Even without a deed to secure debt, if a contractor provides materials to repair a home, the contractor may be able to file a “materialmen’s lien,” which makes the home security for repayment of the cost of materials used to repair it. Alabama Code § 35-11-210.

Q. 8.3: Should I consider refinancing my home to pay for home repairs or other expenses?

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 often 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. A few tips for consumers include:

- 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 Better Business Bureau. Check out their complaint history.
- Never make false statements on a loan application. Any lender who allows this is fraudulent and possibly criminal.
- Do not let anyone convince you to borrow more money that you know you cannot afford.
- Attend homeownership education courses. They are available through the U.S. Department of Housing and Urban Development (HUD) or counseling agencies. You can find information on Housing Counseling including a list of HUD approved Housing Counselors for Alabama here:

<https://www.hud.gov/states/alabama/homeownership/hsgcounseling>

Q. 8.4: Can I trust my family member or close friend to help me with expenses?

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. Often, these persons use scare tactics to convince the elderly, disabled, or limited English or non-English speaking homeowner 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.

If a power of attorney is needed, consider a Limited Power of Attorney, whereby the agent has no authority to make any contracts regarding the home.

Q. 8.5: What do I need to know about foreclosure consultants?

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.

Homeowners should not engage with foreclosure consultants that charge a fee. These individuals or companies convince their victims that they can stop the foreclosure and help them catch up on the missed payments. Some foreclosure rescue scams simply charge thousands of dollars to homeowners with the promise of a loan modification. Others try to obtain title by having a homeowner sign a power of attorney or a deed. They may also seek to further encumber the property with liens for fees and extravagant charges. Often times 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 encumbrances. Often they ensure homeowners that they may stay in the property for the rest of their lives but provide no legal protections to this effect. In fact, after they obtain the property, they generally sell it to someone else and the new owner serves the former owners with eviction papers. Consumers should avoid engaging with potential purchasers who solicit by mailers or by phone. Clients should be warned of such scams. Consumers should also be advised of the tips outlined above as ways to guard against fraudulent lenders.

HUD offers free housing counseling for foreclosure prevention. A list of these services by geographic area can be found on their website. HUD-approved foreclosure prevention counseling services are provided by certified nonprofit housing counseling agencies working in partnership with the Federal Government. These agencies are funded, in part, by HUD and NeighborWorks® America. Do not pay a private company for these services. For more information and a list of housing counselors in Alabama, go to <https://apps.hud.gov/offices/hsg/sfh/hcc/fc/>

If a homeowner is thinking about selling a home to get their home equity, they should consult with a licensed real estate agent to get a better idea of fair value.

Homeowners should not sign anything without reading and fully understanding it, and consulting with someone else (preferably an attorney). Under Alabama law, under most circumstances, a signature on a contract is binding even if the homeowner does not understand what they were signing.

Q. 8.6: 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 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, they should not

simply ignore it. Ask the court to modify the payment order. A court may lower 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 consumers will lose future service or coverage.
- Items purchased on credit or pledged as security on a loan can usually be taken if payments cannot be made. If extra time is needed, contact the lender in advance.

Generally speaking, you pay your bills in the order of priority. Home mortgage/rent, medical bills/food/utilities/court ordered payments, and then everything else. Your credit card bill is the last bill that you pay, and you only pay it if you have paid for your necessities in full.

Q. 8.7: What should I do if I find myself unable to pay all of my bills?

If the consumer can afford to make small monthly payments, he or she 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 a 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.

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 he or she speaks with and the date, time, and details about the conversations. If the debtor arranges a payment agreement, he or she 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.

Be careful about signing renewal and/or refinancing agreements with creditors, as you may be waiving rights that you may have against the creditor. Also, generally speaking, if you sign an agreement with a creditor for payment, you will have re-started the statute of limitations with regard to that debt.

Q. 8.8: What do I do if I have no ability to pay my creditors?

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, a car with little value, and would probably not have bank accounts or other investments. Such debtors who are unable to arrange a workable payment plan should consider sending the collector a letter informing them of the inability to pay and requesting that the collector stop contacting the debtor about the debt. The debtor should include in the letter any special circumstances which help explain the inability to pay. Sending such a letter limits the collector’s right to contact the debtor.

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 contact a lawyer specializing in bankruptcy services.

Q. 8.9: What happens when debtors fail to pay?

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. Debtors are NOT criminally liable for being unable to pay debts.

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.

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, worker’s compensation and unemployment compensation (there are some exceptions for child support, alimony, and taxes).

In addition, Alabama allows citizens to choose to exempt either \$1,000 of any person property (including a paycheck) **or** \$8,225 (not including a paycheck) from execution. They may not use both personal property exemptions. The homestead exemption allows a person to exempt from collection by unsecured creditors up to \$15,500 (or \$31,000 if owners are married) for a person’s principal residence.

The exemptions discussed under the Bankruptcy section of this manual may also provide a baseline level of protection for consumers who might be able to file for bankruptcy.

If all property and income is exempt, then the debtor should notify creditors. Once creditors know there is nothing to take, they may write off the debt or at least stop collection activity.

9.0 INSURANCE ISSUES

9.1 Overview

Don't panic if you don't have your insurance policy on hand. The insurance company can look it up, but the best thing to do first is to locate your policies, or at least your policy numbers. If you can locate a recent bill it will have the information needed. This will make the process faster and smoother when dealing with the insurance company.

Contact your insurance agent or company as soon as possible. They will arrange for an adjuster to inspect your property at no charge. Most insurance companies have a time requirement for reporting. They will want your current contact information, insurance information, and a home inventory, or list of the damaged and lost property. If your damages are not much higher than your deductible, you may be better off not filing a claim. Consider having a contractor check to be sure you know the full extent of your damages before making this decision.

If your damages are significant, immediately after the disaster, have an accurate account of your damages for the insurance company. You will have time to submit your damage list but you need to document them while you still can. Take pictures or videos that show your damaged property before removing anything. Save damaged items if possible so that your insurance company can inspect them. When making a list of damages, you can get a printable inventory listing from the National Association of Insurance Commissioners. The link to the list is:

https://www.insureuonline.org/home_inventory_checklist.pdf.

For more help, check out the Claim Guidance Library found at the United Policyholders website - a non-profit organization that protects the interests of policyholders. <http://www.uphelp.org>

9.2 Summary of the Law

When a disaster occurs, most major insurance companies establish disaster hotlines for their policyholders. Also, major insurers often set up mobile disaster units close to affected areas and bring adjuster's in from other geographic areas. The Alabama Department of Insurance and the National Association of Insurance Commissioners also can provide assistance in providing contact information for insurance companies after a disaster. Their contact information is as follows:

Alabama Department of Insurance (<https://www.aldoi.gov/>)

- Email: ConsumerServices@insurance.alabama.gov
- Consumer Services Phone: 800-433-3966 or 334-241-4141

National Association of Insurance Commissioners (www.naic.org)

- Email: help@naic.org

- Phone: 816-783-8500

If anyone asks you for money to help expedite your claim alleging that they are working on behalf of the government, the Alabama Department of Insurance, a “public adjuster’s” office, or your insurance company, be careful. Demand to see official photo identification and immediately report this to your insurance company or the Alabama Department of Insurance for verification.

Many states authorize “public adjusters.” Public adjusters are not licensed in Alabama and those offering services as public adjusters may be operating in violation of Alabama law which could make it more difficult to recover in the event you have a dispute with them. Pursuant to the laws of the State of Alabama, only attorneys can represent you in claims against insurance companies and in negotiating with insurance companies on your behalf. Further, Alabama law provides that only attorneys can assist you in handling or expediting your claim against an insurance company in return for a percentage of your insurance benefit payments. If you retain an attorney to assist you with your insurance claim, be sure any contract with your attorney is in writing, and that you understand exactly what expenses, if any, you are agreeing to pay over and above any contingency fee (a fee based on a percentage of your recovery).

Most insurance companies will only reimburse for the reasonable cost of repair. If prices quoted for repairs appear inflated, get another estimate and obtain your insurance company’s agreement (preferably in writing) 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.

With that said, you have a duty to mitigate your damages. This means that you need to take reasonable steps to prevent your damages from getting worse. Following a disaster it can be difficult to get work done quickly. You may need to make temporary repairs. If so, take plenty of pictures before, during and after the repairs, and save all of your receipts as you may be reimbursed for the temporary repairs.

If you do not agree with the insurance company’s assessment of your damages, you can challenge it. You may wish to seek the advice of assistance of an attorney in the event that you do not believe the insurance company’s offer is fair or reasonable.

Remember that all of the following information and answers to FAQs do not substitute for the express, written terms in your insurance policy. It is important that you read your insurance policy very carefully and if you have questions, seek help from your insurer, an attorney, or the consumer resources offered by the Alabama Department of Insurance and/or the National Association of Insurance Commissioners

9.3 Assignment of Benefits

Some repair companies may ask you to complete an Assignment of Benefits document. This is an agreement you sign that allows the company to act on your behalf and seek payment directly from your insurer for their work. This can be useful but it is a legal contract which signs away some of your rights. You need to be sure the company is trustworthy and that you are comfortable allowing them to control your claim. If you choose, you can file the claim directly with your insurance company and then maintain control of the rights and benefits of your insurance policy.

9.4 Flood Insurance

Be sure to investigate the coverage you have for floods. Your home will likely suffer damage if it is flooded, because the water can cause damage to the foundation of a house and penetrate the walls and subfloors, causing mold and other problems.

Homeowners' policies generally do not include flood insurance, so the federal government, through FEMA, oversees the National Flood Insurance Program ("NFIP"). (Some water damage claims are included in homeowner's policy because they are not considered to be a "flood" so always check with your agent).

If you believe that you have flood insurance, you should first check with your flood insurance provider to see if your insurance policy is separate from your homeowners' policy, or provided through NFIP. Most flood insurance policies, including those provided under NFIP, require you to give prompt written notice of loss. Contact your insurance company or insurance agent to find out how to submit your notice of claim. Typically, you will file a claim for damages under your flood insurance policy by submitting a signed Proof of Loss to your insurance company, after working with the insurer's adjuster to prepare the Proof of Loss. The Proof of Loss typically must be in the hands of the insurance company within 60 days after the loss occurs, unless your policy clearly says otherwise. However, in cases of severe catastrophe, FEMA may authorize Proof of Loss extensions for everyone in your area. If you do not agree with the amount in the Proof of Loss prepared by the adjuster for your company, you must hire your own adjuster and submit your Proof of Loss by the deadline.

You will need to submit a list of lost or damaged contents with your Proof of Loss. See the link provided in section 2.1 for a printable form. To the extent possible, include on the list the quantity of each item, a description, brand name, cost, model and serial number, and your estimate of the loss amount. An insurance adjuster will prepare an estimate of damages and provide you with a copy. You and the insurance company can then agree on the amount of the damages to be paid. If you do not agree, then you can appeal the insurance company's decision. Please refer to your policy for more information on claims payment and the appeals process.

Answers to Questions about the National Flood Insurance Program
https://www.fema.gov/sites/default/files/2020-05/f084_atq_11aug11.pdf

More detailed NFIP information is also available at the United Policyholders website:

<http://www.uphelp.org>

9.5 FAQs

A. Auto

Q. 9.1: My car was flooded. How does the insurance company determine if my car should be totaled?

Whether your car will be totaled is generally determined on a case-by-case basis by a licensed appraiser. Under Alabama law, when the cost of repair for a vehicle is 75% or more of its fair retail value, the vehicle is totaled. A primary factor is the amount of water in your car. Generally, if water covered your dashboard or electrical components, the car will be totaled.

Q. 9.2: My car was totaled due to flood damage and I have full coverage on it. The company is going to pay the Blue Book value but I still owe substantially more than that. Doesn't the company have to pay what I owe on the auto?

No. Under most auto insurance policies, the insurance company is only obligated to pay the current market value of your vehicle. You can request that the adjuster explain to you how the value was derived to ensure that all of the vehicle's equipment, features, upgrades and recent work was considered in determining the value. To cover the difference between the market value of your vehicle and what you actually owe on a car loan, you would need to have an endorsement to your auto policy or a separate policy that provides Guaranteed Auto Protection ("GAP") coverage.

Q. 9.3: What will happen to the vehicle's title if my car is totaled due to flood or other damage?

Once a car is totaled by an insurance company it becomes a "salvage vehicle" and cannot be driven on the highways or have a valid license plate. For more information on salvage titles and on rules regarding restoring salvaged vehicles, contact the Alabama Department of Revenue at 334-242-9000 or review their website (<https://revenue.alabama.gov/motor-vehicle/title-information/>).

If you own the vehicle outright, you will have to sign the title over to the insurance company so they can sell it for salvage. In exchange, they will give you a check for the market value of the vehicle. If you still owe on a car loan, the insurance company will coordinate with you and your lender to have the title signed over to them. In most cases, the insurance company will establish

contact with the lender and be advised of the amount owed on the loan. If the insurance company has determined that the market value of the vehicle is \$10,000 and the amount owed the lender is \$8,000, the insurance company will issue a check for \$8,000 to the lender to release the lien on the car.

Q. 9.4: The insurance company requested that I tow my flooded vehicle to a specific location for inspection. Am I responsible for the towing charges?

Discuss this with the insurance company. They should pay the towing expense by reimbursing you or paying the tow truck operator once the vehicle is delivered at the inspection site. You should not be responsible for the expense since you are assisting the insurance company in a prompt inspection of your vehicle, as well as protecting it from further damage. On the other hand, if you refuse to allow the insurance company to move the car, you will then be responsible for storage costs or the cost of having the car towed to your home.

Q. 9.5: The insurance company agreed to repair my vehicle. Can the company require the use of used parts?

There is no requirement under Alabama law that an insurance company replace damaged parts with brand new parts. The only requirement is that the parts used are comparable to the parts being replaced and return the vehicle to the value it had prior to the damage.

Q. 9.6: Since my car was damaged, I had to rent a vehicle. Does my auto policy cover the cost of renting a car?

Your policy will provide coverage for renting another vehicle only if you have an endorsement on your policy for rental reimbursement coverage. Under this coverage, the insurance company will pay up to the limit shown on the endorsement for the reasonable amount of time it takes to repair or replace your vehicle.

Q. 9.7: Is my vehicle covered for disaster related damage?

Only if you carry “other than collision” coverage, also called comprehensive coverage, on your policy. This information can be found on your policy’s declarations page. If you do not have a copy of your policy, you may wish to check with your agent or insurance company. If you do have comprehensive coverage, it still does not pay for things that are not permanently installed in your car, like removable radios or GPS systems. Keep in mind that comprehensive coverage usually only covers flooding as a result of natural disasters, and does not cover flooding as a result of neglect, like leaving your sun roof open while it is raining.

Q. 9.8: What if I do not agree with the settlement offered by the insurance company, particularly the market value amount for my totaled vehicle?

Insurance companies are allowed to choose from several claims valuation methods to make a valuation assessment. Blue Book value is often used, but there are other means of determining value. If you disagree with the valuation your insurance provided, ask the adjuster to explain how the settlement amount was derived. You may also provide examples of vehicles for sale in your area that are in the same pre-loss condition to support a higher market value. If you still disagree, you have the right to refuse the valuation and begin a dispute process. You should also look at the specific language in your policy. There is a specific provision in many policies for appraisal which lists the responsibilities of both parties.

Q. 9.9: My car was washed away in the flood. How do I find out where it is now?

Contact the Unclaimed Autos department of the area police department. Also, your vehicle may have been towed to a storage facility without your consent.

Q. 9.10: I've received a check from the insurance company, but am not satisfied with the amount. I plan to file a complaint to request additional funds be paid. Should I cash the check? If I cash the check, does it mean that I accept their decision and amount of payment?

Be careful! Call the adjuster or company first before cashing the check. If possible, get the adjuster or company to agree in writing that cashing the check will not preclude you from requesting additional funds be paid before you endorse the check. In addition, read both sides of the check carefully, as well as any accompanying documents. Some companies have a release from further liability disclaimer printed on the back of the check. Be sure to review any document before signing it – including a check.

Q. 9.11: If an insured vehicle is financed, how are claim checks issued? If issued to both the insured and lien holder (financer), how does the insured collect?

The lien-holder endorsement requires the insurer to pay to the insured and the lien holder as their interest may appear. The insured and the lien holder may both be named on the check. In most cases, insurance claim payments for damage to property that is security for a loan will be made payable to you and the lienholder, and the checks would require endorsements from both parties. The insured and the lien holder will agree on the release of funds.

Q. 9.12: What is the insured's recourse if the check made payable jointly to the lien holder and insured is sent directly to the lien holder and cashed without the insured's knowledge or endorsement on the check?

Your first step would be to contact the insurer and your lien holder. You can also contact the Alabama Department of Insurance at 1-800-433-3966 or visit their website at <https://www.aldoi.gov/Consumers/>. You may also wish to contact an attorney.

Q. 9.13: Does the insured have to agree to have their vehicle totaled if they will be "upside down" on their loan?

The policy contract states how the loss will be paid, and it is typically the insurance company that decides whether or not to total a car. The insured and the insurance company may negotiate the settlement in which the insured may retain the salvaged vehicle; however, the insured would be responsible for the cost of repairs at that point and would need to comply with Alabama salvage laws.

B. Mobile Homeowners

Q. 9.14: Are there different types of policies that provide coverage for mobile homes?

Yes, mobile homes may be written on various types of policies, including a homeowner's policy. The majority of mobile homes are currently written on a mobile homeowner's policy. You should check with your agent or company to see what type of policy you have.

Q. 9.15: Wind caused my tree to fall on my mobile home and damaged my roof. Does my mobile homeowner's policy cover the damages to my home and would the company pay to remove the tree from my property?

If your policy provides coverage for a windstorm, it will pay for the damage to your roof. Most mobile homeowner's policies provide a limited amount of debris removal coverage. Some companies may provide an option to increase coverage. You should contact your agent or company regarding debris removal coverage.

Q. 9.16: Does my mobile homeowner's policy provide Additional Living Expense?

Most mobile homeowner's policies provide some additional living expense reimbursement in the event the mobile home is damaged or destroyed from a peril (or perils) insured against by the policy that renders the mobile home uninhabitable. Some companies may provide an option to increase this coverage. It is important that you contact your agent and/or company regarding your additional living expense coverage.

Q. 9.17: My mobile home was flooded. Will my mobile homeowner's policy pay for my damage?

Some mobile homeowner's policies provide coverage resulting from a flood. Other mobile home policies exclude flood coverage. It is important to check your policy and/or contact your agent regarding flood coverage for your mobile home.

C. Homeowners

For information regarding adjusting standards in Alabama, please visit:

<https://www.robinskaplan.com/resources/publications/2019/09/claims-handling-practices-alabama>

Q. 9.18: Can I make repairs to my property immediately?

Generally, you should make temporary repairs, if necessary, to protect your property from further damage. This may include things like tarps and boarding. Do NOT make permanent repairs until an adjuster from your insurance company has inspected the damage. Your policy covers the cost of necessary temporary repairs, so save your receipts for materials and labor. You should also take pictures and/or videos of the damage before making temporary repairs, if possible.

Q. 9.19: Does a homeowner's insurance policy provide additional living expense ("ALE") coverage?

If you can't remain in your home because of loss from "a covered peril," your homeowner's or renter's policy may pay for staying in a hotel, motel, or other temporary shelter. (Most flood insurance policies do not provide for ALE coverage). However, payments are limited based on policy provisions, which generally range from 10 to 30 percent of your dwelling coverage limit. If the damage does force you to move, be sure to tell your insurer where you are and how to reach you by phone. Also, leave a note at your damaged residence telling the insurance adjuster how to find you. Finally, ALE may cover the cost of eating at restaurants if you do not have anywhere to store food in your temporary shelter. Be sure to discuss with your insurer exactly how much of your ALE funds you may use for dining.

Q. 9.20: My home was not flooded by rising water; however, the sewer line backed up and caused damage in my home. Is this covered under my homeowner's policy?

It depends on your policy. Some policies exclude water or sewage from outside the residence premises plumbing system that enters through sewers or drains. Contact your insurance company or agent regarding coverage.

Q. 9.21: My house was flooded and I placed my furniture and household items in the front yard to dry out, but they were stolen. Will my homeowner's policy cover this loss?

It depends on your policy. Even though there is an exclusion for flood losses in most homeowner's policies, many policies contain an exception to that exclusion, such as "We do cover an ensuing loss by theft or attempted theft or any act of stealing." Contact your insurance company or agent regarding such potential coverage.

Q. 9.22: Under a homeowner's policy, who determines the cause of damage and who pays for an expert if one is needed?

The insurance company usually determines the cause of damage as its adjusters investigate and evaluate the loss. If an expert is required to determine the cause of the loss, the cost is usually borne by the insurance company, but in some cases may be paid by the insured. You should only pay if you hired the expert in support of the claim.

Q. 9.23: My house got water in it from the flood. I had damage to the roof and the roof is sagging and rain water came in through the roof. I don't have flood insurance, but I do have homeowner's insurance. What, if anything, may be covered under my homeowner's policy?

If a covered peril, such as wind, lightning, hail, or the rain itself, caused damage to the roof and created an opening, then water damage to your home and personal property resulting from rain water coming through that opening may be covered under a standard homeowner's policy. If, however, there was pre-existing damage that could have been fixed beforehand to prevent the damage, it is unlikely anything will be covered.

Q. 9.24: I've received a check from the insurance company, but am not satisfied with the amount. I plan to file a complaint to request additional funds be paid. Should I cash the check? If I cash the check, does it mean that I accept their decision and amount of payment?

Be careful! Call the adjuster or company first before cashing the check. If possible, get the adjuster or company to agree in writing that cashing the check will not preclude you from requesting additional funds be paid before you endorse the check. In addition, read both sides of the check carefully, as well as any accompanying documents. Some companies have a release from further liability disclaimer printed on the back of the check. This will typically be considered a binding contract and prevent you from seeking further compensation. The check may be a partial payment to initiate repairs. Additional funds may be released when you submit proof that repairs have been completed.

Q. 9.25: How does replacement cost coverage work on policy types such as flood, homeowner's, dwelling, and mobile home?

Replacement cost coverage replaces and/or repairs your damaged dwelling or personal property with new material, items of like kind and quality, or both. In most cases, you should only be responsible for paying the deductible. Some homeowner's and dwelling policies automatically include replacement cost coverage for the dwelling, others may be endorsed for an additional premium, and some may only provide actual cash value. Companies may also offer replacement cost coverage for mobile home policies. You should check with your agent or company to see if your company offers replacement cost coverage on your policy. Keep in mind that the insurance company may only issue partial payment until you submitted proof that you have completed the repairs. Contractors will often work with you on obtaining full payment as they complete different sections of the job.

Q. 9.26: I've received a check from my company for damages to my home. It is going to cost more to repair than the amount received. Did they pay me enough for damages?

If you have replacement cost coverage, your claim may be paid in two stages. Your first claim check may be for the actual cash value (ACV) of the damaged property, or it might be half the replacement cost. ACV is determined by taking the replacement cost for the covered loss and deducting for depreciation. Once the damaged property is repaired or replaced, you are entitled

to receive the depreciation that was previously withheld in your first check, up to the replacement cost of the damaged property, and not to exceed the actual amount spent or the total amount of insurance on the dwelling. Generally, to receive the difference between ACV and replacement cost, the policy contract requires that the repair or replacement be completed within a specific period of time, usually 180 to 365 days from the date of loss. Policies may also provide an option for the insured to extend that time frame if requested in writing as outlined in the actual policy. It is important to check your policy, contact your agent, or do both regarding the specific requirements of your policy.

If you are not underinsured, in most cases you should only be responsible for paying your deductible. If you believe your company is not offering an amount sufficient to repair and/or replace your damaged property, minus your deductible, you may want to request appraisal in accordance with the provisions in your policy. Have your insurance company explain the basis for its payment and clarify if additional funds are forthcoming.

Q. 9.27: What's the difference between the different types of homeowner policies? How does a dwelling policy differ from a homeowner's policy?

Homeowner's policies may either provide "named peril" or "all risk" coverage—sometimes called "comprehensive" or "open peril" coverage. Named peril means the damage must be caused by a peril that is specifically named or listed in the policy. All risk is used to describe policies that typically cover all perils unless specifically excluded in the policy. The homeowner's policy provides coverage for the dwelling, personal property, other structures, loss of use (also called additional living expense – ALE), medical payments, and personal liability. A dwelling policy provides coverage for the dwelling, personal property, or both. Dwelling insurance is often used for seasonal homes, rental property, homes under construction, or other situations where a homeowner cannot obtain a "standard" homeowner's policy.

Q. 9.28: Do checks from insurance companies have to be endorsed by both the insured and the mortgage company? Does the same procedure apply to mobile homes?

Insurance claims payments for damage to property that is security for a loan must be made payable to the policyholder and the mortgage company, so they would require endorsements from both parties. The policyholder will probably need to work with the mortgage company during the repair. The funds will often be placed in an escrow account and only disbursed when the mortgage company is satisfied with the repairs.

Q. 9.29: Are plumbing problems/backed up toilets covered by any types of insurance, even after a flood?

Some homeowner's policies provide coverage for accidental discharge, leakage, or overflow from within a plumbing system and if rising flood waters cause toilets to overflow, the loss may be covered. Contact your insurance company or agent regarding potential coverage.

Q. 9.30: There is a power outage in my area and we have no utilities in our home. Will my policy pay for a hotel until power is restored?

Probably not. The policy will normally only provide loss of use coverage if your home is damaged by a peril covered in your policy and, as a result of the covered damage, the residence premises are unfit to live in. Your policy may, however, cover spoilage of food during extended outages. You must check the specific language in your insurance policy and/or contact your insurance company or agent.

Q. 9.31: I bought my house several years ago and last year my mortgage was bought by another mortgage company. My original company provided flood insurance, but now I find that the new mortgage company did not provide it. What can I do?

If the community in which the property is located participates in the NFIP, mortgage companies are required by statute to ensure that a property in a high-risk flood zone has flood insurance. A mortgage company must provide notice to the borrower of the requirement of flood insurance. If the borrower fails to purchase flood insurance, then a mortgage company may purchase flood insurance for the property. For information regarding the statute, contact the Federal Emergency Management Association (“FEMA”) representative at a Disaster Recovery Center (“DRC”) or the National Flood Insurance Program (“NFIP”). Remember that it is important as a homeowner to ensure that all necessary insurance coverage is in place.

- If you have a concern about a private mortgage lender, you should contact the Federal Trade Commission (FTC) at 1-877-382-4357. You may also visit its website at www.ftc.gov
- If the lender is a Federal Chartered Lender, contact the Southeast Regional Office of Thrift Supervision at 404-888-0771.
- In some instances, the U.S. Department of Housing and Urban Development (HUD) can help. Call HUD at 1-800-225-5342.

Q. 9.32: Wind caused my tree to fall on my house, which caused damage to my roof. Does my homeowner’s policy cover the damage to my house and pay for the removal of the tree from my property?

If your policy provides coverage for wind, the roof damage caused by the tree should be covered. Most policies will pay to remove a tree if a covered peril caused it to fall on and damage covered property. Some policies limit the coverage for removal to \$500 per tree and no more than 5% of your total home coverage. Contact your insurance company or agent regarding coverage.

Q. 9.33: My neighbor’s tree fell down on my house and damaged my roof. Will my neighbor’s homeowner’s policy pay for the damage to my home and remove the tree?

Probably not. Your neighbor is not legally liable for an act of nature. Generally, the neighbor is responsible for paying for any damage to your home when the fallen tree showed visible signs that the tree was dead or had a disease. If your neighbor is not at fault or their policy does not pay for your damage, you can make a claim under your policy if the peril that caused the tree to fall is a covered peril in your policy. If your insurer successfully collects from your neighbor's insurance company, you may be reimbursed for your deductible. You should contact your agent and/or insurance company regarding the damage.

Q. 9.34: Some trees blew down in my yard during a storm. Will my homeowner's insurance policy pay for the loss to and removal of the trees?

No. Removal of the trees is not covered if they did not fall on or damage an insured structure.

Q. 9.35: A windstorm blew my fence down. Will my homeowners insurance cover loss of my fence?

Any damage caused by wind is normally covered under a standard homeowner's policy. If your policy provides coverage for wind, you may have coverage for the fence. Some policies do not provide any coverage for fences damaged by wind. You should check your policy and/or contact your agent or insurance company regarding coverage.

Q. 9.36: During the storm, a tree fell on the roof of my home which allowed rain to enter from the opening made by the tree. I now see mold growing - do I have coverage?

Most homeowner's policies will provide coverage for the property damaged by rain that entered through an opening caused as a direct result of a tree falling on your roof. Generally, mold is excluded in the homeowner's policy; however, many policies will cover an ensuing mold loss caused by or resulting from covered water damage. Coverage for mold loss would include the reasonable and necessary costs to repair or replace your damaged property. Many policies limit the additional cost for remediation or testing of ensuing mold unless your policy includes mold remediation coverage.

Q. 9.37: During the storm, my home was flooded. Does my homeowner's policy cover mold damage from the flood water?

Typically, homeowner's policies do not cover damage caused by or resulting from flood because flooding is usually an excluded peril under homeowner's policies. If there is no flood coverage provided in the homeowner's policy, any ensuing mold loss resulting from flood would not be covered under the policy.

Q. 9.38: The food in my refrigerator spoiled because of loss of power in my area. Will my homeowner's policy pay for the loss?

Many homeowner's policies will provide coverage for spoilage of refrigerated or frozen food caused by an off-premises power failure or if the power failure is a direct result of a peril covered in your policy (for example, a tree falls through your powerlines during a storm). If the loss of power is not caused by a covered peril (for example, a flood), then the spoliation would not be covered under the policy. Coverage for spoiled food is typically limited, and it may be subject to your personal property deductible.

Q. 9.39: If I evacuate due to a storm, and my personal property is damaged or stolen while in another location, will my personal property be covered by my auto or homeowner's policy?

Policies vary. Be sure to check your policy. Homeowner's insurance frequently provides coverage for personal property, but the coverage is typically capped at 40-75% of the insured value of the building. Certain items, such as jewelry and artwork, may be excluded by your homeowner's insurance and may require additional personal property insurance coverage. If your personal property is damaged or stolen while you and your property are in another location, your insurance may cover the loss, but it is frequently capped at a percentage of the insured home value (such as 10%). Generally, a personal automobile policy will not cover personal property.

C. National Flood Insurance Program ("NFIP")

Q. 9.40: What is the difference between a flood insurance policy issued by the NFIP and a policy issued by an insurance company? Does one provide better coverage than the other?

Flood insurance is provided by the federal government through the NFIP. The policies that are sold by insurance companies are usually NFIP policies sold through the Write Your Own ("WYO") program. This is done to make it easier to purchase flood policies through local insurance agents. However, even though the policies are purchased through the insurance companies, they are NFIP policies. Claims are handled by NFIP adjusters and by insurance company adjusters that are certified by the NFIP to handle flood claims. Questions and complaints can be referred to the NFIP at 1-888-225-5356. Some insurance companies may also offer flood coverage other than the NFIP policy. You should check with your agent or company to see if flood coverage other than the NFIP policy is available, and to compare the coverage being offered to determine the best coverage for your needs.

Q. 9.41: Does the policy provide any coverage for additional living expense?

No, the NFIP policy does not provide coverage for additional living expense.

Q. 9.42: How is damaged residential property valued after a loss under an NFIP policy?

If the property is a single-family home, your principal residence at the time of loss (meaning you live there at least 80% of the year), and it is insured to at least 80 percent of its value, the dwelling will be valued at replacement cost, which is the cost to replace the part of the building

that is damaged. If the dwelling is rebuilt at a new location, the replacement cost won't exceed what it would have cost to replace at the former location.

Contents, appliances, carpets and carpet pads, and outdoor property are valued at actual cash value. Actual cash value is the cost to repair with new material of like kind and quality less depreciation.

Q. 9.43: Is there coverage for the cost of debris removal? What about loss avoidance measures?

The cost of removing debris on your property and/or the cost of removing debris of your property that is on someone else's property is covered, but it's subject to the limit of the policy. You will be compensated at the federal minimum wage if you or a member of your household performs the removal work.

Loss avoidance measures are limited to \$1,000 for the cost of sandbags, temporary levees, pumps and plastic sheeting and lumber, including the value of your work. Loss avoidance measures are available if damage to insured property from flood is imminent, and the threat of flood damage is apparent enough to lead a person of common prudence to anticipate flood damage. An additional \$1,000 is available for the cost of moving insured property to protect it from flood. These benefits do not increase the limit of insurance.

Q. 9.44: If my automobile was parked on my property and damaged by flood, does the flood policy cover the damage?

No, automobiles are not covered property under the NFIP policy. If you have comprehensive or full coverage under your auto policy, flood should be covered by that policy. If you have liability coverage only, there is no coverage for the car.

Q. 9.45: Does flood insurance cover damage to built-in appliances?

Generally, built-in appliances such as dishwashers are covered under NFIP policies. Check to see what flood insurance coverage you have. Then, call the NFIP at 1-888 225-5356 to determine what would be covered in a flood insurance policy.

Q. 9.46: What coverage is available for commercial buildings?

Up to \$500,000 is available for non-residential buildings, and an additional \$500,000 is available for contents of non-residential buildings. Buildings and contents are valued at actual cash value, which is the cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

Q. 9.47: When does coverage become effective under an NFIP policy?

There is typically a 30-day waiting period before coverage goes into effect after an NFIP policy is purchased. However, there are a few exceptions to the 30-day waiting period, such as if a building is located in a newly-designated Special Flood Hazard Area, if an additional amount of insurance is selected as an option on the renewal bill, when a new policy is initially purchased in connection with a loan, or if the property is affected by flooding on burned federal land that is a result of, or is exacerbated by, post-wildfire conditions.

Q. 9.48: What if my dwelling or commercial building is valued at more than the maximum limits available?

Some commercial flood insurance companies will offer excess flood insurance that provides coverage beyond the standard flood insurance policy. The excess insurers often require that you carry the maximum amount of primary insurance issued by the NFIP or a WYO carrier. Additionally, the limits of the primary flood insurance policy must be paid before the excess policy coverage will pay anything. You should contact your agent to learn more about potential excess flood insurance coverage.

Q. 9.49: Where can I get more information about flood insurance?

Check out <https://www.floodsmart.gov/faqs>, which is the frequently asked questions webpage for the NFIP.

10.0 HEALTH CARE ISSUES

10.1 Overview

After a natural disaster, lawyers may face questions running the gamut from simple requests about where to find the phone number for a state agency to more complex inquiries about health care insurance or malpractice liability.

As a lawyer, you must differentiate between questions that raise genuine legal issues or require you to direct someone to an appropriate agency and questions that are more properly within the province of a physician or other health care provider. In the wake of Disaster Katrina, some legal hotlines reportedly received calls for advice on how to diagnose “Katrina Cough” or the best first-aid techniques to deal with a particular illness or injury. These are not questions that a lawyer should (or should be expected to) answer and you should not attempt to do so.

On the other hand, we expect that there will be many questions that are well within the scope of a lawyer’s expertise. We anticipate that you will be asked to suggest sources of information concerning public resources or benefits, as well as questions concerning payment for health care services. This guide is designed to provide basic information to help you formulate your response.

10.2 Summary of the Law

Organization and financing of health care in the United States

In the United States, the delivery of health care involves a complicated network of providers, including, among others, first responders (such as emergency medical technicians and paramedics), health care practitioners, hospitals, out-patient clinics, ambulatory care centers and emergency treatment centers.

The sources of payment for health care services are also wide-ranging. In increasingly rare circumstances, patients may personally pay the entire cost of the medical services that they receive. More commonly, payment comes from a combination of sources, including a patient’s copayment and additional funds from private insurance (including employer sponsored health benefits), government benefits (such as Medicaid or Medicare) or even funds set aside to cover charity care.

Medical Provider / Patient Relationships

While health care providers are not subject to a common-law “duty to treat,” such an obligation can arise from contractual obligations, statutory requirements or a de facto relationship established by the parties’ conduct. Lawyers should not assume that the “no duty to treat” principle is applicable in all cases.

Once a medical provider-patient relationship has been established, the medical provider assumes legal and ethical duties to the patient that, again, may be based on contract (such as may be required as a condition of the medical provider's participation in an HMO), common law theories of tort, fraud and fiduciary standards, federal or state statutes, or professional ethics. In addition, both private accreditation systems and public quality control regulations play a part in defining the public's reasonable expectations of medical providers.

It is also important to note that hospitals and health care systems owe certain duties to patients that are independent of any obligations that may derive from the medical provider-patient relationship. In fact, federal law requires hospital emergency departments to stabilize and treat any person who comes through its doors, regardless of their insurance status or ability to pay.

Other responsibilities may include (a) the duty to supervise and retain medical staff, (b) the duty to use reasonable care in the maintenance of facilities and equipment, (c) the duty to oversee all persons who practice medicine within the facilities, and (d) the duty to formulate, adopt and enforce adequate rules and policies to ensure quality care for patients.

10.3 Alabama Medicaid

Medicaid is a medical assistance program that provides health insurance for some Alabama residents who have low income. Medicaid provides full medical coverage for those eligible with no monthly premium and very low out of pocket costs. Most low-income children are eligible for Medicaid. Early and Periodic Screening, Diagnostic and Treatment (EPSDT) is the child health component of Medicaid. Federal statutes and regulations state that children under age 21 who are enrolled in Medicaid are entitled to EPSDT benefits and that States must cover a broad array of preventive and treatment services. Additionally, disabled adults, pregnant women and seniors (age 65 or older) may be eligible for Medicaid. Parents of minor children can obtain Medicaid coverage if their income is very low (based on the federal poverty level for the household size). There are some other specific types of Medicaid for nursing home residents, women with breast or cervical cancer, women of childbearing age, and emergency Medicaid for non-citizens to name a few. For additional information on the various types of Medicaid see: https://medicaid.alabama.gov/content/3.0_Apply/

10.4 Useful Websites

Alabama Department of Public Health

<https://www.alabamapublichealth.gov/cep/index.html>

Alabama Ready – Government website re: disaster preparedness

<https://www.ready.gov/alabama>

Alabama Department of Homeland Security

www.dhs.alabama.gov

Alabama Medicaid

<https://medicaid.alabama.gov/>

AL Dept of Insurance

<https://www.aldoi.gov/>

AL Dept of Labor

<https://www.labor.alabama.gov/>

AL Department of Human Resources – disaster and emergency resources

<https://dhr.alabama.gov/disaster-and-emergency-resources/>

ADPH Emergency Preparedness guide

<https://www.adph.org/CEP/assets/EmergencyPrepGuide.pdf>

Red Cross

<https://www.redcross.org/local/al-ms.html>

CDC

<https://emergency.cdc.gov/planning/index.asp>

Federal Emergency Management Agency

For federal resources available in a disaster, visit the FEMA website:

<https://www.fema.gov/locations/alabama>

10.5 FAQs

A. COBRA Health Insurance Continuation

Q. 10.1: I lost my job as a result of the disaster. What will happen to my health insurance?

If you have lost your job due to a natural disaster, you may be eligible to extend your employer-based medical plan coverage for a limited period of time.

A federal law known as “COBRA” applies to employers of 20 or more employees. Employees, including former employees, covered under an existing health plan are eligible for continuation

coverage pursuant to COBRA if: (a) the employer continues to offer health plan coverage, and (b) coverage is lost due to a “qualifying event,” such as death of an employee or termination of employment. This would apply to employer-sponsored dental and vision plans as well. The maximum period of coverage allowed under federal law is 18 months for employment termination and 36 months if coverage is lost due to death of the employee. . .

Continued coverage must be the same as the group health plan coverage for similarly situated employees. If the employee’s plan option is terminated, coverage must continue to be offered to the employee and his/her covered dependents as long as the employer provides health plan coverage.

Generally, the cost of continuation coverage may not exceed 102% of the total premium. This may be much more than what the employee generally pays, as it can include the employer portion of the group health plan premium/cost. Furthermore, premiums may be changed only once during a 12-month period, and medical conditions may not be the basis of the change.

Employers must notify participants of their COBRA rights, usually within 44 days (30 days to notify the plan administrator, and 14 days for the plan administrator to notify the participants). Once the notice is mailed, participants have 60 days from that date to elect or reject coverage. Payment for the first period of coverage (no more than 1 month) must be made in full no later than 45 days from the date of the COBRA election, and a 30-day grace period for each premium due for coverage thereafter.

If you believe that your right to continuation coverage has been ignored or violated, you should contact the Employee Benefits Security Administration (a part of the U.S. Department of Labor) at 866-444-3272, or regionally (Atlanta) at 404-302-3900.

Q. 10.2: What if my employer drops health insurance coverage altogether?

If your employer goes out of business or otherwise cancels its group health plan coverage, neither federal COBRA nor state continuation will be available to you or your family members. However, you and your family members may be able to obtain individual insurance policies. You should contact an insurance broker to purchase such a policy. If you do not know of one, you can contact the Alabama Department of Insurance at 334-269-3550 to find a broker in your area.

The Affordable Care Act (ACA) reformed the existing health insurance market by prohibiting insurers from denying coverage or charging higher premiums because of an individual’s preexisting conditions. The ACA also created the Health Insurance Marketplace, also known as the Marketplace or the Exchange, where taxpayers find information about health insurance options, purchase qualified health plans and, if eligible, obtain help paying premiums and out-of-pocket costs.

Q. 10.3: I lost my job, but my spouse is still employed. I used to be covered under my employer’s plan. Can I switch to my spouse’s plan?

Often, the most cost-effective option for maintaining health coverage is special enrollment. If other group health coverage is available (for example, through a spouse’s employer-provided plan) special enrollment in that plan should be considered. It allows the individual and his/her family an opportunity to enroll in a plan for which they are otherwise eligible, regardless of enrollment periods. However, to qualify, enrollment must be requested within 30 days of losing eligibility for other coverage.

After you request special enrollment due to your loss of eligibility for other coverage, your coverage will begin on the first day of the next month.

You and your family each have an independent right to choose special enrollment. A description of special enrollment rights should be included in the plan materials you received when initially offered the opportunity to sign up for the plan.

Special enrollment rights also arise in the event of a marriage, birth, adoption, or placement for adoption. You have to request enrollment within 30 days of the event. In special enrollment as a result of birth, adoption, or placement for adoption, coverage is retroactive to the day of the event. In case of marriage, coverage begins on the first day of the next month.

This question and answer subsection utilizes information provided by the U.S. Department of Labor at <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/hipaa-consumer>

B. HIPAA, Privacy and Special Enrollment Rights

The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) established fairly stringent privacy and disclosure requirements for health care providers and health plans. There are certain exceptions to these requirements in the event of a disaster, however. Two bulletins authored by the U.S. Department of Health and Human Services provide summaries of what patient information can be shared in order to assist in disaster relief efforts. A 2014 bulletin published in light of the Ebola outbreak is at: <https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/special/emergency/hipaa-privacy-emergency-situations.pdf>

An earlier bulletin was published for Katrina victims in 2005, but the information contained there is generally still accurate today. Please visit: <http://www.hhs.gov/sites/default/files/katrinanhipaa.pdf>

Q. 10.4: Can health care information be shared in a severe disaster?

Providers and health plans covered by the HIPAA Privacy Rule can share patient information in all of the following ways:

TREATMENT

Health care providers can share patient information as necessary to provide treatment.

Treatment includes:

- sharing information with other providers (including hospitals and clinics),
- referring patients for treatment (including linking patients with available providers in areas where the patients have relocated), and
- coordinating patient care with others (such as emergency relief workers or others that can help in finding patients appropriate health services).

Providers can also share patient information to the extent necessary to seek payment for these health care services.

NOTIFICATION

Health care providers can share patient information as necessary to identify, locate, and notify family members, guardians, or anyone else responsible for the individual's care of the individual's location, general condition, or death.

The health care provider should get verbal permission from individuals, when possible; but if the individual is incapacitated or not available, providers may share information for these purposes if, in their professional judgement, doing so is in the patient's best interest.

- Thus, when necessary, the hospital may notify the police, the press, or the public at large to the extent necessary to help locate, identify, or otherwise notify family members and others as to the location and general condition of their loved ones.
- In addition, when a health care provider is sharing information with disaster relief organizations that, like the American Red Cross, are authorized by law or by their charters to assist in disaster relief efforts, it is unnecessary to obtain a patient's permission to share the information if doing so would interfere with the organization's ability to respond to the emergency.

IMMINENT DANGER

Providers can share patient information with anyone as necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public -- consistent with applicable law and the provider's standards of ethical conduct.

FACILITY DIRECTORY

Health care facilities maintaining a directory of patients can tell people who call or ask about individuals whether the individual is at the facility, their location in the facility, and general condition.

Of course, the HIPAA Privacy Rule does not apply to disclosures if they are not made by entities covered by the Privacy Rule. Thus, for instance, the HIPAA Privacy Rule does not restrict the American Red Cross from sharing patient information.

Q. 10.5: Is the HIPAA Privacy Rule suspended during a national or public health emergency?

No; however, the Secretary of HHS may waive certain provisions of the Rule under the Project Bioshield Act of 2004 (PL 108-276) and section 1135(b)(7) of the Social Security Act.

What provisions may be waived

If the President declares an emergency or disaster and the Secretary declares a public health emergency, the Secretary may waive sanctions and penalties against a covered hospital that does not comply with certain provisions of the HIPAA Privacy Rule:

1. the requirements to obtain a patient's agreement to speak with family members or friends involved in the patient's care (45 CFR 164.510(b))
2. the requirement to honor a request to opt out of the facility directory (45 CFR 164.510(a))
3. the requirement to distribute a notice of privacy practices (45 CFR 164.520)
4. the patient's right to request privacy restrictions (45 CFR 164.522(a))
5. the patient's right to request confidential communications (45 CFR 164.522(b))

When and to what entities does the waiver apply

If the Secretary issues such a waiver, it only applies:

1. In the emergency area and for the emergency period identified in the public health emergency declaration.
2. To hospitals that have instituted a disaster protocol. The waiver would apply to all patients at such hospitals.
3. For up to 72 hours from the time the hospital implements its disaster protocol.

When the Presidential or Secretarial declaration terminates, a hospital must then comply with all the requirements of the Privacy Rule for any patient still under its care, even if 72 hours has not elapsed since implementation of its disaster protocol.

Regardless of the activation of an emergency waiver, the HIPAA Privacy Rule permits disclosures for treatment purposes and certain disclosures to disaster relief organizations. For instance, the Privacy Rule allows covered entities to share patient information with the American Red Cross so it can notify family members of the patient's location. See 45 CFR 164.510(b)(4).

Learn More:

- See the Hurricane Katrina Bulletin: HIPAA Privacy and Disclosures in Emergency Situations – PDF for more about sharing information in emergency situations.

C. Health Insurance Claims

Q. 10.6: I lost all of my health insurance papers and I need to file a claim. What should I do?

Ask your insurance company or your plan administrator to provide you with a summary plan description (“SPD”). The SPD explains the terms of the plan, including the procedures for filing claims. If you don't receive your health insurance through your workplace, then ask your insurer for a claims procedure booklet.

You will want to know how to file a claim for your benefits. The steps outlined below describe some of your plan's obligations and briefly explain the procedures and timelines for filing a health or disability benefits claim.

Before you file, however, be aware of the Employee Income Retirement Security Act of 1974 (“ERISA”), a law that protects your health and disability benefits and sets standards for those who administer your plan. Among other things, the law and rules issued by the Department of Labor include requirements for the processing of benefit claims, the timeline for a decision when you file a claim, and your rights when a claim is denied. You should know that ERISA does not cover some employee benefit plans (such as those sponsored by government entities and most churches).

An important first step is to make sure you meet your plan's requirements to receive benefits. Your plan might say, for example, that a waiting period must pass before you can enroll and receive benefits or that a dependent is not covered after a certain age. Also, be aware of what your plan requires to file a claim. The SPD or claims procedure booklet must include information on where to file, what to file, and whom to contact if you have questions about your plan, such as the process for providing a required pre-approval for health benefits. Plans cannot charge any filing fees or costs for filing claims and appeals.

If, for any reason, that information is not in the SPD or claims procedure booklet, write your plan administrator, your employer's human resource department (or the office that normally handles claims), or your employer to notify them that you have a claim. Keep a copy of the letter for your records. You may also want to send the letter by certified mail, return receipt requested, so you will have a record that the letter was received and by whom.

If it is not you, but an authorized representative who is filing the claim, that person should refer to the SPD and follow your plan's claims procedure. Your plan may require you to complete a form to name the representative. If it is an emergency situation, the treating physician can automatically become your authorized representative without you having to complete a form

When a claim is filed, be sure to keep a copy for your records.

If your claim is denied, the plan administrator must send you a notice, either in writing or electronically, with a detailed explanation of why your claim was denied and a description of the appeal process. In addition, the notice must include the plan rules, guidelines, protocols, or exclusions (such as medical necessity or experimental treatment) used in the decision or provide you with instructions on how you can request a copy from the plan. The notice may also include a specific request for you to provide the plan with additional information in case you wish to appeal your denial.

Claims are denied for various reasons. Perhaps the services you received are not covered by your plan. Or, perhaps the plan simply needs more information about your claim. Whatever the reason, you have at least 180 days to file an appeal (check your SPD or claims procedure to see if your plan provides a longer period).

Use the information in your claim denial notice in preparing your appeal. You should also be aware that the plan must provide claimants, on request and free of charge, copies of documents, records, and other information relevant to the claim for benefits. The plan also must identify, on your request, any medical or vocational expert whose advice was obtained by the plan. Be sure to include in your appeal all information related to your claim, particularly any additional information or evidence that you want the plan to consider, and get it to the person specified in the denial notice before the end of the 180-day period.

On appeal, your claim must be reviewed by someone new who looks at all of the information submitted and consults with qualified medical professionals if a medical judgment is involved. This reviewer cannot be a subordinate of the person who made the initial decision and must give no consideration to that decision.

Plans have specific periods of time within which to review your appeal, depending on the type of claim. Be sure to check your SPD or your claims procedure booklet to find out what these times are.

Source: This question and answer subsection utilizes information provided by the U.S. Department of Labor at: <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/filing-a-claim-for-your-health-or-disability-benefits.pdf>

Q. 10.7: I'm enrolled in Medicare Part C (Medicare Advantage), but I can't access any of my usual providers. What do I do?

In the event of a major disaster declaration by the President or a Governor, Medicare Advantage plans are expected to:

1. Allow Part A/B & supplemental Plan C benefits to be furnished at specified non-contracted facilities;
2. Waive in full requirements for gatekeeper referrals where applicable;
3. Temporarily reduce out-of-network co-pays to in-network co-pay amounts; and
4. Waive the 30-day notification requirement to enrollees as long as all the changes benefit the enrollee.

For more information, see: <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/mc86c04.pdf> (see § 150)

D. Prescriptions

Q. 10.8: How can I get my prescriptions filled?

For information on how to get your prescriptions filled:

- To find an open pharmacy, go to RxOpen.org, which maps open and closed pharmacies during disasters. The site also has locations of American Red Cross shelters and infusion centers in the affected communities.
- Low-income patients can go to community health centers or clinics where the charity Direct Relief (directrelief.org) provides free prescription drugs and medical supplies.
- For those with a Medicare Prescription Drug Plan, (medicare.gov) recommends contacting the plan to find the nearest network pharmacy that is open. If one is unavailable, the plan can connect evacuees with an out-of-network pharmacy. People might have to pay full price, but may be eligible for a refund. Call your plan for more details and instructions. To find your plan's phone number, call 800-MEDICARE.
- Medicare recipients who need dialysis treatments should contact their End-Stage Renal Disease Network (ESRD) or call 800-MEDICARE to get ESRD Network contact information. Those who have a Medicare Advantage Plan should contact their provider to find out how they

can get supplies, transportation to dialysis services and other information about dialysis treatments.

- For people who need chemotherapy or other cancer treatments, the National Cancer Institute (800-4CANCER) can help locate cancer care providers.

Any evacuee who needs a prescription filled generally must have one of the following:

- A written prescription from a licensed health care provider
- A prescription phoned or faxed in from a licensed health care provider to a licensed pharmacy in Alabama
- A current prescription bottle indicating a remaining refill
- Other proof of an existing prescription

Evacuees in shelter should check with shelter staff for prescription assistance.

Those eligible for the federal Emergency Prescription Assistance Program (EPAP) can receive a one-time fill of up to a 30-day supply of medication. There is no charge or co-pay to the eligible person. EPAP is a joint program of the U.S. Federal Emergency Management Agency and the U.S. Department of Health and Human Services.

During a disaster, individuals with prescription questions regarding EPAP eligibility, covered drugs and durable medical equipment, and claim submission may call 855-793-7470.

- The EPAP-covered prescriptions can be filled at almost any pharmacy in Alabama
- The pharmacy is responsible for verifying eligibility for the EPAP program

Eligibility for the Emergency Prescription Assistance Program:

- Must be from a county declared as a disaster area. Recipients must demonstrate residence within the covered area. Zip codes of areas determined eligible for EPAP will be posted to the EPAP website (<http://www.phe.gov/preparedness>) just prior to or during the activation. Identification can be a driver's license, state issued identification card, current lease, utility bill, or other credible attestation of residence.
- Must have no prescription insurance coverage.

Q. 10.9: I'm enrolled in a Medicare Part D Prescription Drug Plan. How can Medicare help me with my prescriptions?

Until the end of a declared disaster period, Part D sponsors are expected to suspend “refill too soon” restrictions to allow enrollees a necessary supply of drugs. Part D sponsors should also allow an affected enrollee to obtain the maximum extended day supply, if requested and available at the time of refill.

In addition, Part D sponsors are supposed to ensure that enrollees that do not have access to in-network pharmacies are guaranteed adequate access to out-of-network pharmacies to fulfill their prescription needs. Enrollees may have to pay a greater amount for a prescription purchased out-of-network, however, than is usually spent purchasing the prescription in-network.

Pharmacies are also permitted to waive co-pays when a pharmacy determines that individuals cannot pay (waiver is at the discretion of the pharmacy and is not confined to periods of disaster).

For more information, see: https://www.cms.gov/Medicare/Prescription-Drug-Coverage/PrescriptionDrugCovContra/Downloads/MemoPDBManualChapter5_093011.pdf

Other Helpful Links can be found at: <http://www.phe.gov/coi/>

11.0 PERSONAL BANKRUPTCY ISSUES

11.1 Overview

The damages and dislocation caused by a disaster is expected to make some storm victims think about filing bankruptcy. Below is a summary of common questions asked about bankruptcy. This outline is meant to only be a bankruptcy primer. It is advisable for any storm victim considering bankruptcy to consult a qualified bankruptcy attorney. To the extent that state law is relevant, the emphasis is on Alabama law.

11.2 Summary of the Law

There are four different chapters of the Bankruptcy Code affecting individuals: Chapter 7, Chapter 11, Chapter 12, and Chapter 13. A Chapter 7 case is sometimes called “liquidation.” As explained below, eligibility for Chapter 7 is now subject to a “means test” which requires those making an income above certain levels to instead file a Chapter 13 case. In any individual bankruptcy case, certain types of property are exempt from creditors and are kept by the debtor.

In Chapter 13, a Debtor who has regular income files a plan, or contract that obligates the debtor to pay some or all of his debts over a 3-5 year period, Chapter 13 is available only to an individual with regular income whose unsecured debts are less than \$419,725 and whose secured debts (usually a mortgage) are less than \$1,257,850. 11 U.S.C. § 109(e). As noted above, under the means test, a debtor having an income above a certain threshold must file a Chapter 13 case. Chapter 13 does offer certain benefits, even though it does require payments from future income over time. A significant benefit is when the debtor is facing foreclosure on a mortgage; missed payments can be cured over the term of the plan, and, in effect, the mortgage is reinstated. Additionally, some debts, such as civil fines and property division arising from divorce, are dischargeable in Chapter 13 but not in Chapter 7. Chapter 13 also allows the Debtor to retain possession of his or her property, even nonexempt property, while making payments under a repayment plan. However, keep in mind that the payments in the plan must equal or exceed the value of the retained nonexempt property, in addition to allocating the future “excess income” not needed for expenses.

Chapter 11 is primarily used by businesses that need to reorganize in order to get out from under debt, although individuals may file Chapter 11 also if they otherwise do not qualify under the Chapter 13 debt limits. In Chapter 11, the debtor proposes a plan for paying some or all of his debts, and his creditors get a chance to vote on whether to accept or reject that plan. Chapter 11 may be the only recourse for a consumer debtor with an extremely large mortgage that causes his secured debt to exceed the limit for Chapter 13. Its procedures and requirements are significantly more expensive than in Chapter 13.

Chapter 12 is for “family farmers” and “family fishermen.” To qualify as a family farmer or family fisherman, a person must derive a certain portion of their income from farming or fishing operations. 11 U.S.C. § 101(18)-(21). Like a Chapter 13 case, a Chapter 12 case includes filing

a plan and devoting income in the future to pay creditors. Chapter 12 debtors have more flexibility to deal with debts arising from farming or fishing.

In general, a major benefit of bankruptcy is that an automatic stay is implemented which prevents further collection actions by creditors once the bankruptcy case is filed. However, the stay may be limited to 30 days or may not come into effect at all if you have had bankruptcy cases dismissed within the last year.

Because filing bankruptcy will be reported on credit reports and may affect future credit applications, it is important to evaluate how this may affect an individual before proceeding.

11.3 Relevant Courts/Agencies

Consult the website of the United States Bankruptcy Court for the Northern District of Alabama for updates and information at <https://www.alnb.uscourts.gov/>. The clerk's office in Anniston (Eastern Division) can be reached at (256) 741-1500. The clerk's office in Birmingham (Southern Division) can be reached at (205) 714-4000. The clerk's office in Decatur (Northern Division) can be reached at (256) 584-7900. The clerk's office in Tuscaloosa (Western Division) can be reached at (205) 561-1600.

Consult the website of the United States Bankruptcy Court for the Middle District of Alabama for updates and information at <https://www.almb.uscourts.gov/>. The clerk's office for each of the three divisions - Montgomery (Northern Division), Opelika (Eastern Division) and Dothan (Southern Division), can be reached through the Montgomery office at (334) 954-3800.

Consult the website of the United States Bankruptcy Court for the Southern District of Alabama for updates and information at <https://www.alsb.uscourts.gov/>. The clerk's office in Mobile and Selma can be reached at (251) 441-5391.

There are a number of forms that debtors must file as part of the bankruptcy process.

The forms can be found at:

<http://www.uscourts.gov/forms/bankruptcy-forms>.

A particularly useful link can be found at:

<http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics>, which provides a good summary of the bankruptcy process.

Again, although debtors have this information available to them, if at all possible, they should not file bankruptcy without an attorney. Bankruptcy is highly specialized, filled with traps and pitfalls for attorneys, let alone a pro se debtor. It can be hard for a debtor to fix any mistakes they make when they file bankruptcy pro se, and then harder for their attorney to correct the mistakes if the case is dismissed.

11.4 FAQs

Q. 11.1: What is involved in the bankruptcy process?

A bankruptcy case begins with the filing of a petition, schedules (forms in which the debtor lists all property, secured claims, unsecured claims, claimed exemptions, and other information), and a statement of financial affairs (which provides personal background information). The debtor must also file a statement of intent with respect to any secured property indicating which such property he or she will surrender, reaffirm, or redeem. If the debtor fails to carry out the statement of intent within the appropriate time, the automatic stay (explained below) may be lifted with respect to this property. *See* 11 U.S.C. § 521(a)(2); 11 U.S.C. § 362(h).

Debtors must also file copies of all payments received from an employer within 60 days before filing, an itemized statement of monthly net income, a statement disclosing anticipated increases in income or expenditures within the next 12 months, and a “record” of any interest in an Education IRA or tuition savings program. 11 U.S.C. § 521(a) and (c). The debtor must also file a certificate that he or she has completed the mandatory credit counseling class. 11 U.S.C. § 521(b)(1). Finally, the debtor must provide the trustee with copies of recent tax returns. 11 U.S.C. § 521(e) and (f). Failure to comply with filing requirements will result in dismissal. 11 U.S.C. §521(i).

In a Chapter 7 (liquidation) case, the court will appoint a trustee to represent the interests of the creditors. Around a month after filing, the debtor must attend the “§341 meeting of creditors” conducted by the trustee to answer questions under oath regarding the debtor’s assets and schedules. Creditors are invited to attend and ask questions, although they rarely do in routine bankruptcy cases. The 341 meeting is usually pretty quick, but a debtor’s lack of compliance with filing requirements, incomplete information, or responses to questions may result in the hearing lasting longer than usual, or being continued. After the 341 meeting, the trustee will gather and attempt to sell any nonexempt property. The debtor can sometimes purchase the non-exempt property from the trustee using exempt money or post-petition earnings. The Trustee may also file lawsuits to recover funds of the bankruptcy estate that are considered to be preferences and/or fraudulent transfers, or to pursue other claims that a debtor may have. The proceeds from all sales and lawsuits are eventually distributed to the creditors once all such property is administered. As a general matter, the debtor will receive a discharge a few months after the section 341 meeting, while the administration of the bankruptcy case will continue until all assets are administered, and the proceeds distributed.

In all bankruptcy cases, the debtor must attend credit counseling classes before filing and a financial management class before a discharge will be granted. A Chapter 13 (wage earner) case begins by filing similar papers to a Chapter 7 case. Unlike Chapter 7, where all assets that are not exempt are sold by a trustee, in Chapter 13 the Debtor will file a repayment plan. The debtor makes payments under this Plan from future income each month directly to the Chapter 13 trustee, who is the administrator for the benefit of the creditors. The trustee then pays creditors according to the terms of the Plan. The debtor typically retains possession of all property during

repayment. The Plan has a three or five-year term. It may provide for cure of home mortgage and automobile loan arrearages, and in certain instances for older vehicles might permit a write down of the debt to the value of the automobile as well as a reduction in interest rate. It is extremely important that you check your local rules for any special procedures regarding mortgage payments. The plan may also strip off a wholly unsecured second lien on a debtor's homestead. When the debtor has repaid creditors according to the plan, the debtor will be discharged of all debts, even if the Plan did not pay them in full. The percentage paid to creditors will be dependent on the amount of nonexempt property the debtor retains and the disposable income a debtor has. The amount of personal expenses will be potentially subject to adjustment by the Court if excessive, in order to permit disposable income to be allocated to creditors under the Plan.

Q. 11.2: Should I file for bankruptcy?

Filing bankruptcy is a strictly personal decision. The ratio of your assets to liabilities is an important factor. The type of debt you have is another factor. Some debts cannot be discharged. The effect bankruptcy might have on your credit rating, ability to borrow in the future, or reputation, may be important. The impact bankruptcy might have on prior transfers of money or property may be a factor. The need to cure mortgage debt arrearages might be important. The desire to retain nonexempt property in the future might also be a factor. The decision as to whether and when to file a bankruptcy petition should be based upon the facts of each debtor's individual case.

Q. 11.3: Are there any pre-requisites to filing for bankruptcy?

Before an individual Debtor can file a bankruptcy petition, he or she (or if filing as spouses, both) must complete an approved credit counseling course within 180 days before filing. 11 U.S.C. § 109(h). Such a course must outline opportunities for credit counseling and provide budget analysis assistance. These courses can be taken online. The debtor must file a certificate of compliance. 11 U.S.C. § 521(b). However, the law provides for a temporary waiver (30 days) of this requirement if a debtor can show "exigent circumstances" and that he or she requested credit counseling but was unable to receive it within five days of the request. 11 U.S.C. § 109(h)(3)(i) and (ii). This is rarely allowed. Case law has consistently held that a pending foreclosure IS NOT an exigent circumstance. The law also provides an exemption if such services are not available in the area where the Debtor resides or if the Debtor is incapacitated, disabled, or on active military duty. 11 U.S.C. § 109(h)(2) and (4). This would only be applicable in very rare circumstances, particularly given the access to online courses.

Q. 11.4: How does the "means test" work?

Note: This question and answer subsection reflects current dollar amounts as of October 2018. However, as of April 1, 2008, and each three-year interval ending on April 1 thereafter, dollar amounts in the Bankruptcy Code are adjusted. 11 U.S.C. § 104. Also, median incomes and

expense deductions used to calculate the “means test” (based on IRS standards) are adjusted periodically.

A debtor who files chapter 7 will be subjected to a “means test.” *See* 11 U.S.C. § 707(b)(2). The purpose of the test is to prevent abuse of Chapter 7. If a Debtor has primarily consumer debt (as opposed to business debt) and does not meet the “means test,” a presumption of abuse arises and a Chapter 7 case may be dismissed or converted to a Chapter 13 case. Debtors must file Official Bankruptcy Form B 122A-2, which contains the “means test” calculation. The form is available at <http://www.uscourts.gov/forms/means-test-forms/chapter-7-means-test-calculation>.

The formula for the means test is quite complex, but in short, it works as follows:

First, the debtor’s “current monthly income” must be determined. “Current monthly income” is defined as the average of the last six months income received by the debtor, excluding benefits received under the Social Security Act, payments to victims of war crimes, and payments to victims of international or domestic terrorism. *See* 11 U.S.C. §101(10A). The debtor’s “current monthly income” (on an annualized basis) must then be compared to the “median family income” for his or her state. The median incomes for each state can be found at <http://www.justice.gov/ust/means-testing>. The current median incomes for Alabama based on household size are: \$49,191 (one person); \$59,818 (two people); \$66,280 (three people); \$80,845 (four people). If the debtor’s current monthly income is lower than the state median, no presumption of abuse arises. 11 U.S.C. § 707(b)(2).

If, however, the debtor’s current monthly income exceeds the state median, the “means test” applies and the debtor must calculate certain expense deductions based in part on IRS standards (see <http://www.justice.gov/ust/means-testing>). The allowed expenses are deducted from the current monthly income to arrive at “disposable income.” If, based on the formula, the debtor has sufficient disposable income to afford a calculated hypothetical Chapter 13 plan payment, a presumption of abuse arises. Unless this presumption is rebutted, the case may be dismissed or converted to a Chapter 13 case.

It is worth noting that the concept of “current monthly income” also impacts certain calculations for Chapter 13 repayment plans. *See* 11 U.S.C. § 1325(b). For debtors whose annualized “current monthly income” is less than the applicable state median, the repayment plan must be for three years. If the debtor’s “current monthly income” is greater than the applicable state median, the plan must generally be for five years. *See* 11 U.S.C. § 1322. Additionally, an above-median debtor generally must use the means test to calculate their minimum plan payment.

Q. 11.5: Which debts are not discharged in bankruptcy?

Certain debts are not dischargeable in bankruptcy, meaning bankruptcy does not affect them. While Chapter 13 has historically allowed for the discharge of more debts than Chapter 7, changes in the law have largely eliminated this advantage.

In a Chapter 7, 11, 12, or 13 case, you cannot as a general matter obtain a discharge for, among other things:

- domestic support obligations, including alimony and child support,
- student loans, absent undue hardship (a very difficult standard to meet),
- damages resulting from driving under the influence,
- court-ordered restitution, or a criminal fine included in the sentence for conviction of a crime,
- taxes that are generally less than three years old or if older, arising under late or fraudulent tax returns,
- damages for willful and malicious injury awarded for personal injury or death of another person,
- debts incurred by fraud,
- certain taxes and tax penalties, or debts incurred to pay non-dischargeable taxes,
- property settlements in a divorce, (these may be dischargeable in Chapter 13)
- condominium or cooperative housing fees and assessments (i.e., HOA dues) that come due after the case is filed, so long as you remain in the property, or
- court filing fees.

See 11 U.S.C. §§ 523 and 1328. Some debts are presumed non-dischargeable, such as consumer debts for luxury goods or services greater than \$675 incurred within 90 days before filing or cash advances greater than \$950 obtained within 70 days before filing. Note, however, that in Chapters 12 and 13 you can restructure the payments for non-dischargeable debt under the Plan and provide some relief from immediate payment demands for these types of debts.

Q. 11.6: Suppose I leave out a debt on my petition?

If the debt is not listed on your schedules, then you may not get the benefit of the discharge and may have to repay that debt. There is some case law to suggest that the debtor may still be able to get the discharge in a no-asset Chapter 7 case, absent any fraud or intent to hinder a creditor. 11 U.S.C. § 523(a)(3). In addition, if you fail to list the debt with the intent to conceal and defraud, then you may lose your discharge in its entirety.

Q. 11.7: Does a bankruptcy filing stop a wage garnishment?

Yes. This is a result of the automatic stay that occurs when you file a bankruptcy petition. However, in a Chapter 7 case, the stay only protects your wages from being garnished for debts incurred before you filed the bankruptcy petition. The automatic stay also does not apply to payments for child support or alimony.

Q. 11.8: What is a discharge in bankruptcy?

A “discharge” in bankruptcy means that you are legally free and clear of any obligation to repay certain debts. The creditor no longer has any right to demand or collect that debt. The debtor no longer has any obligation to repay it. 11 U.S.C. § 727.

Q. 11.9: How can I escape from my student loan debt?

Student loans are dischargeable only on a showing of “undue hardship.” 11 U.S.C. § 523(a)(8). The undue hardship standard is very hard to meet. Because there is no statute of limitations for federal student loan debt, it is important to try to proactively resolve student loan defaults. Even if a student loan is not dischargeable in bankruptcy, you may be able to rehabilitate a defaulted student loan and enter into an income-based repayment plan which can significantly reduce your monthly payments and keep you out of default.

Q. 11.10: Can I repay a creditor if I want to — even after bankruptcy?

Yes. You can voluntarily repay a debt even if it would be discharged by your bankruptcy. In a Chapter 7 case, the only limitation is that you must use exempt assets (assets you listed on your schedules as being exempt) or post-petition earnings (money you earned after you filed the petition). You may be asked to reaffirm a debt by a creditor. Be careful when pursuing this option. If you reaffirm a debt, then you will still owe it, even after the bankruptcy. While you may be tempted to reaffirm a debt to keep collateral like a car, if that car is later repossessed, you may be saddled with a deficiency balance you could have discharged had you not reaffirmed the debt.

Q. 11.11: What is the automatic stay?

The “automatic stay” prevents a creditor from continuing to enforce a claim against a debtor during the pendency of the bankruptcy case. Some examples of actions by a creditor that would violate the stay are these: (1) filing a new lawsuit, or continuing to press a lawsuit that had already been filed, (2) collection letters, (3) filing a “financing statement” to perfect a security interest, (4) refusing to issue a transcript of school records, or (5) seeking to foreclose on property.

There are a number of new exceptions to the automatic stay, however. The automatic stay does not apply to certain proceedings involving certain domestic matters (i.e. paternity, domestic

violence, dissolution of marriage), withholding of income to pay domestic support obligations (i.e., child support, alimony), restriction or suspension of a driver's license, and certain pre-existing eviction actions. See 11 U.S.C. § 362(b). Moreover, the stay automatically terminates after 30 days if the case is filed by a debtor within one year after he or she had another bankruptcy case dismissed, unless the court finds that the new filing is in good faith. 11 U.S.C. § 362(c)(3). If the debtor has had two bankruptcy cases dismissed in the past year, no stay will come into effect at all, unless the court imposes the stay. Once a discharge is obtained, the discharge will operate as an injunction against efforts to collect the discharged debt. In a Chapter 7 case, the automatic stay also automatically terminates with regard to secured debt or an automobile lease if a statement of intent and a reaffirmation agreement are not filed timely.

Q. 11.12: I'm married, can I file by myself?

Yes, but your spouse will still be liable for any joint debts. However, in a Chapter 13 case, the co-debtor stay will prevent any attempt to collect a joint consumer debt from your spouse during the pendency of the case. 11 U.S.C. § 1301. In some cases where only one spouse has debts, or one spouse has debts that are not dischargeable, then it might be advisable to have only one spouse file. If the spouses have joint debts, the fact that one spouse discharged the debt may show on the other spouse's credit report.

If you and your spouse own your home jointly, filing a Chapter 7 bankruptcy without your spouse may not prevent the trustee from trying to sell the home and using the non-exempt proceeds from your half to pay your creditors. If you and your spouse have a joint checking account that you cannot fully exempt, a Chapter 7 trustee may try to use that money, including money your spouse deposited, to pay your creditors. Additionally, if you try to gift property to your spouse before filing Chapter 7, a trustee may be able to claw that property back from your spouse, and you may be denied a discharge.

Q. 11.13: Where do I file if I haven't lived in the same state or district for the last six months?

Under federal law, (28 U.S.C. § 1408) a bankruptcy case should be filed where the debtor has lived "for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period." See also 11 U.S.C. 522(b)(3)(A). This means that the case should be filed in the bankruptcy district in which the debtor has lived for the greatest portion of the last six months. Typically, your case will be handled within the district in the closest division, and the bankruptcy judges regularly conduct hearings at each of the division's courts.

Q. 11.14: If I am going through a divorce, how will my ex-spouse filing bankruptcy affect our divorce settlement?

Alimony, maintenance, and/or support are protected from discharge. These exceptions to discharge have been simplified to broadly include "domestic support obligations." See 11 U.S.C.

§ 523(a)(5). In a Chapter 7 case, property settlements not otherwise covered as “domestic support obligations,” including attorney’s fees, are also not dischargeable. 11 U.S.C. § 523(a)(15). In fact, domestic support obligations are now given the first priority for payment of unsecured debt. 11 U.S.C. § 507(a)(1). Additionally, a debtor cannot receive confirmation of a repayment plan or discharge under Chapter 13 unless the debtor has paid all domestic support obligations coming due after the bankruptcy filing. 11 U.S.C. §§ 1325(a)(8), 1328(a).

Q. 11.15: Will my retirement plan or IRA be protected?

Generally speaking, yes, if the funds are in a qualified account. Retirement plans that are ERISA-qualified are protected under current laws in all jurisdictions and can be exempted.

The exempted assets in an individual retirement account, except for a simple employee pension or a simple retirement account, shall not exceed \$1,283,025 in a case filed by a debtor who is an individual, except that such amount may be increased if the interest of justice so requires. 11 USC 522(n).

Q. 11.16: What effect does bankruptcy have on child support?

Filing bankruptcy does not allow your ex-spouse to discharge past due child support obligations. Any back payments owed for child support cannot be discharged in a bankruptcy proceeding. As noted above, the automatic stay does not apply to proceedings to establish or modify domestic support obligations or to withholding of income for payment of domestic support. (11 U.S.C. 523 (a)(5)).

Q. 11.17: What about co-signers on loans?

If someone has co-signed a loan with you and you file for bankruptcy, the co-signer may have to pay your debt. Chapter 13, however, extends the automatic stay to co-debtors for consumer debt in most cases pending confirmation of a Plan. 11 U.S.C. § 1301. However, if the co-signed debt is not fully repaid by a debtor, the co-signer is still liable for the balance.

Q. 11.18: Will my filing bankruptcy stop a foreclosure?

Yes. The automatic stay prevents your lender from foreclosing, until it gets permission to go forward with the foreclosure proceedings. Eventually, a debtor in bankruptcy will have to provide “adequate protection” to a secured creditor, or the automatic stay can be lifted. Examples of adequate protection include making ongoing payments on the debt and keeping current insurance coverage. Moreover, in order to keep the secured asset, the Debtor will have to become current on the mortgage in a Chapter 7 or cure the arrears in a Chapter 13.

Q. 11.19: What property is exempt from the Trustee in a Chapter 7 case?

In Alabama, a Debtor must use exemptions provided by Alabama law, unless they have recently moved. In order to claim Alabama exemptions, the debtor must have lived in Alabama for at least two years (730 days). Otherwise, the debtor can only claim the exemptions of the state in which he or she resided for the largest portion of the 180-day period preceding the last two years. 11 U.S.C. § 522(b)(3)(A). If that would result in being unable to claim any state’s exemptions, the debtor may claim the federal exemptions available under 11 U.S.C. § 522(d).

The following are a few examples of exemptions allowed under Alabama and federal law. There may be other exemptions applicable to your property, and you should discuss whether your property will be exempt with an attorney before filing.

| <u>ASSET</u> | <u>EXEMPTION</u> | <u>PROVISION</u> |
|---------------------|--|---|
| Homestead | \$15,000 in real or personal property used as a residence. | Ala. Code § 6-10-2 |
| Personal Property | \$7,500 aggregate for all personal property. | Ala. Code § 6-10-6 |
| Pensions | Tax exempt retirement accounts, which includes 401(k)s, 403(b)s, profit-sharing, and money purchase plans, SEP and SIMPLE IRAs, and defined benefit plans. | 11 U.S.C. § 522 |
| | IRAS and Roth IRAs in amounts up to \$1,362,800 | 11 U.S.C. § 522(b)(3)(C)(n); Ala. Code § 19-3B-508 |
| | Retirement, pension, annuity benefits for teachers | Ala. Code § 16-25-23 |
| | Retirement benefits and annuities for state employees | Ala. Code § 36-27-28 |
| | Retirement and disability benefits for law enforcement officers | Ala. Code § 36-21-77 |

| <u>ASSET</u> | <u>EXEMPTION</u> | <u>PROVISION</u> |
|---------------------|-------------------------|-------------------------|
| | Qualified Trusts | Ala. Code § 19-3B-508 |

Q. 11.20: What if I cannot afford to hire a lawyer to file a bankruptcy case?

Bankruptcy is a complex process and there are many legal and factual matters to consider in deciding whether a bankruptcy case should be filed. While a person can file an individual case pro se, the procedural rules and requirements and the substantive legal issues make any such case extremely hard to complete and to permit a discharge to be obtained. If you cannot afford to hire an attorney, you may be able to obtain assistance in certain circumstances, and if you qualify, by contacting the following:

Legal Services Alabama
1 (866) 456-4995
<https://legalservicesalabama.org/>

AlabamaLegalHelp.org
1 (866) 456-4995
En Espanol
1 (888) 835-3505
<https://www.alabamalegalhelp.org/issues/disaster-legal-assistance>

Alabama State Bar Lawyer Referral Service
1 (800)392-5660
<https://www.alabar.org/for-the-public/get-legal-help>

Alabama Senior Legal Assistance Program
1 (800) 243-5463
<https://www.eastalabamaaging.org/legal-counsel-for-the-elderly>

Montgomery Volunteer Lawyers Program
(334) 265-0222 ext. 2
<https://montgomeryvlp.org/get-assistance/>
*Do not call MVLP if you have called Legal Services Alabama

Legal Aid Society of Birmingham
2021 2nd Ave., N.
Birmingham, AL 35203
(205) 251-3516
<https://www.legalaidbirmingham.com/>

Madison County Volunteer Lawyers Program
(256) 539-2275
<https://vlpmadisoncounty.com/>

South Alabama Volunteer Lawyers Program
1 (855) 997-2857 or (251) 438-1102
<https://www.savlp.org/services>

*For Baldwin, Clarke, Mobile, or Washington counties only.

Q. 11.21: What about obtaining payment from my company, or someone I did business with before the disaster who are now out of business?

If you have a claim for payment you might contact a lawyer for assistance in collecting the debt or seek relief by filing a lawsuit without a lawyer in small claims court, if the amount of the claim is less than \$6,000.

Q. 11.22: Virtually all my property and apartment were destroyed in the disaster. Should I file bankruptcy?

If you only have property that is exempt from creditors then there would appear to be no immediate need as a general matter to file a bankruptcy case. However, this decision is something you should evaluate, looking at all the facts and circumstances of your situation and future. As a general matter, exempt property cannot be taken from you except by creditors that have obtained a lien on the property when you bought it, or for unpaid taxes.

Q. 11.23: My business was affected by the disaster. Can it file bankruptcy?

Businesses can file bankruptcy cases. However, if your business is unincorporated and a “dba”, then any bankruptcy by the business will place you into bankruptcy as well. These matters should be reviewed with an attorney.

To avoid being personally liable for business debts for incorporated businesses, many business owners file both a business bankruptcy and a personal bankruptcy, because the business bankruptcy does not protect the owners from personal liability for the business debts.

12.0 REPLACING LOST DOCUMENTS

12.1 Overview

This section provides information on how to go about replacing documents lost, destroyed or damaged during a disaster.

12.2 U.S. Mail Service

Evacuees can call 800-ASK-USPS (275-8777) for assistance. You can change your address at www.usps.com .[http://www.usps.com/](http://www.usps.com) TDD/TTY Relay: Call 1-800-877-8339. Ask for 1-800-275-8777.

12.3 Bank and Investments Accounts for Replacement Checks, Check Cards, and Bank-Issued Credit and Debit Cards

If you don't have an ATM card or your bank has been destroyed, the first step should be to contact a branch of your bank. For additional information, visit <http://www.fdic.gov> or call the FDIC's toll-free number 1-877-ASKFDIC (1-877-275-3342) for bank contact information.

12.4 Credit Cards issued by companies other than banks

- American Express – 1-800-527-4800 or TDD 1-800-221-9950
<https://www.americanexpress.com/us/security-center/>
- Discover-1-800-DISCOVER (1-800-347-2683) or TDD 1-800-347-7449
www.discover.com/credit-cards/help-center/faqs/fraud.html
- MasterCard – 1-800-627-8372
www.mastercard.us/en-us/consumers/get-support.html
- Visa-1-800-VISA-911 (1-800-847-2911)
<https://usa.visa.com/support.html/>

Obtain a credit report for a list of credit cards.

- Equifax at 1-800-525-6285
- Experian at 1-888-397-3742
- TransUnion at 1-800-680-7289
- www.annualcreditreport.com/index.action

When personal documents and credit cards have been lost or misplaced, authorities suggest that people should be on guard against identity theft. It is recommended that you place a fraud alert on your credit report to proactively help prevent fraud. Call Equifax: 800-525-6285. Experian: 888-397-3742, or TransUnion: 800-680-7289.

12.5 Children's immunization records (Alabama)

There are multiple options if you need to replace your own or your child(ren)'s immunization record(s) or Certificate of Immunization (COI).

(1) Contact the provider directly who administered your vaccines

(2) contact the county health department who administered the vaccines, (here is a list of contact information for all public health districts and county health departments:

<https://www.alabamapublichealth.gov/publications/assets/countycontacts.pdf>)

(3) ask your current provider if they have access to Alabama's immunization registry, ImmPRINT, to locate your record. Immunization Patient Registry with Integrated Technology (ImmPRINT) is a statewide population-based information system for all children born in Alabama since January 1, 1993 and adults.

Please Note: currently there is not a specific form required to request immunization records from the Alabama Public Health Immunization Department.

12.6 Deeds and Mortgages

These records are maintained by the Probate Court for the county where the property is located. If the deed or mortgage was filed for record, it will be accessible here. The Probate Court (Land Records office) is a constitutional office established by the Alabama state legislature as the custodian of legal documents pertaining to real property. These documents include Warranty Deeds, Mortgages, Releases, Powers of Attorney, Liens, Plats, Amendments and other miscellaneous documents designated by state law to be recorded by the Probate Court Recording department.

12.7 Driver's License or State Identification

- Alabama Law Enforcement Agency at <https://www.alea.gov/>
- Florida Highway Safety and Motor Vehicles at <http://www.flhsmv.gov/>
- Georgia Department of Driver Services at <https://dds.georgia.gov/>
- North Carolina Department of Motor Vehicles at <https://www.ncdot.gov/dmv/Pages/default.aspx>

- South Carolina at <http://www.scdmvonline.com/>
- Virginia Department of Motor Vehicles at <https://www.dmv.virginia.gov/>

12.8 Food Stamps/ SNAP Benefits and EBT cards

The Federal Food Stamp Program is the Supplemental Nutrition Assistance Program (SNAP) administered by the U.S. Department of Agriculture and The Food Assistance Division of the State of Alabama Department of Human Resources.

If you already receive SNAP, to report a lost Alabama EBT card, call 1-800-997-8888.

USDA can authorize the issuance of emergency SNAP benefits when there is a presidentially declared emergency or when grocery stores or other regular commercial food supply channels have been restored following a disaster. The D-SNAP (Disaster SNAP) system operates under a different set of eligibility and benefit delivery requirements than the regular SNAP. People who might not ordinarily qualify for SNAP benefits may be eligible under the disaster Supplemental Nutrition Assistance Program if they have had disaster damage to their homes, or expenses related to protecting their homes, or if they have lost income as a result of the disaster, or do not have access to bank accounts or other resources.

For further information regarding the SNAP program as administered in Alabama, see <https://dhr.alabama.gov/food-assistance/>.

12.9 Immigration documents

If you are a permanent resident who needs to replace your Permanent Resident (green) card, or a conditional resident who needs to replace your two-year card that has been lost or destroyed, you may apply for a replacement card by filing a USCIS Form I-90. This website has the I-90 form to replace your “Green Card”: <http://www.uscis.gov/sites/default/files/files/form/i-90instr.pdf>.

If you need to replace other government documents, visit <http://www.usa.gov/Citizen/Topics/Family-Issues/Vital-Docs.shtml>. For further assistance, visit <https://www.uscis.gov> and click on the “Forms” tab.

12.10 Insurance documents

Contact your insurance agency. Concerning flood insurance issued by the National Flood Insurance Program, see <http://www.floodsmart.gov/floodsmart/pages/index.jsp>.

12.11 Medicare/Medicaid/ALL Kids

Medicare is the federal health insurance program for persons 65 and older and persons receiving Social Security benefits. If you have Original Medicare and need to replace your lost or

damaged Medicare card visit a Social Security office, www.ssa.gov or call 1-800-772-1213 (TTY: 1-800-325-0778).

Also, contact Social Security if you temporarily or permanently change your address.

Your Medicare card is proof of your Medicare insurance. If your Medicare card was lost, stolen, or destroyed, you can ask for a replacement by using your online “my Social Security” account (<https://secure.ssa.gov/RIL/SiView.action>). If you don’t already have an account, you can create one. Go to “Sign In” or “Create an Account”. Once you are logged in to your account, select the “Replacement Documents” tab. Then select “Mail my Replacement Medicare Card.” Your Medicare card should arrive in the mail in about 30 days at the address on file with Social Security.

If you can’t or prefer not to use the online service:

- Call 1-800-772-1213 (TTY 1-800-325-0778), Monday through Friday, from 7 a.m. to 7 p.m.; or
- Contact your local Social Security office. See www.ssa.gov.

Contact your plan to replace a lost or damaged membership card if you have one of these:

- A Medicare Advantage Plan
- Another Medicare health plan
- A Medicare Prescription Drug Plan

Get your plan’s contact information from a Personalized Search (under General Search), or search by plan name. You can also call 1-800-MEDICARE (1-800-633-4227).

Medicaid is the needs-based health insurance program funded by the federal and state government through the Alabama Department of Public Health, Medicaid Agency. All Kids is a health insurance program for children through their 19th birthday with household income requirements.

To replace your Medicaid card, call 1-800-362-1504 to ask for a replacement card. Or, you can order a replacement card by setting up an account at My Medicaid using this link: <https://medicaidhcp.alabamaservices.org/Default.aspx?alias=medicaidhcp.alabamaservices.org/Recipient>. This site also lets you print out a temporary card. After you set up your account, remember to save your ID and password for future use. And, keep in mind that providers may be able to enter your Social Security Number to locate your card number.

12.12 Social Security Cards and Payments

If you depend on benefits from Social Security, including Supplemental Security Income (SSI) benefits, you will need to contact the Social Security Administration (SSA) to verify your Social Security number. It's not always necessary to have your Social Security card with you to verify your identity. People must fill out with their background information a form. If you do not have a current mailing address, or the postal service is unable to deliver mail, the local SSA office can issue a Social Security Number printout while you are in the SSA office. The replacement form is online at <http://www.socialsecurity.gov/forms/ss-5.pdf>.

Social Security checks should be direct deposited or put on your Direct Express® debit card. If you have a payment problem, go to the nearest office of the Social Security Administration. To find those locations, see www.SSA.gov or call 800-772-1213(TTY 800-325-0778). You will be able to get emergency payments if necessary. For more information, log onto www.socialsecurity.gov/emergency.

A number of other federal benefits can be deposited on Direct Express® cards. For all questions related to the Direct Express® card, cardholders should see <https://www.usdirectexpress.com/> or call:

- Customer Service: 1-888-741-1115
- Hearing impaired: 1-866-569-0447
- International: 1-765-778-6290 (Collect)

If you are a U.S. born adult, you can replace your Social Security card free. For many types of disaster assistance, you just need to know your Social Security number. If you need a physical card replacement, you can create an account and request the replacement online at <https://www.ssa.gov/myaccount/replacement-card.html>.

If you cannot apply online through my Social Security, you will need to show required documents, original or copies certified by the agency that issued them. All documents must be current (unexpired).

Unless you have established your U.S. citizenship with SSA, you will need to provide proof of U.S. citizenship. For example, an original or certified U.S. birth certificate or U.S. passport are proof.

You must also prove your identity. The document must be current (not expired) and show your name, identifying information (date of birth or age) and preferably a recent photograph. Examples are an U.S. driver's license, state-issued non-driver identification card, or U.S. passport.

The following information quotes the SSA website about replacing a Social Security card when you do not have one of the above documents, <https://www.ssa.gov/ssnumber/ss5doc.htm>. It is specific to adults born in the U.S. For other persons, check www.ssa.gov.

If you do not have one of these specific documents or you cannot get a replacement for one of them within 10 days, SSA will ask to see other documents. Any documents submitted, including the following, must be current (not expired) and show your name, identifying information (date of birth or age) and preferably a recent photograph:

- Employee identification card;
- School identification card;
- Health insurance card (not a Medicare card); or
- U.S. military identification card.

SSA may use one document for two purposes. For example, [SSA] may use your U.S. passport as proof of both citizenship and identity.

12.13 Passports

Passports may be obtained by calling 1-877-487-2778 (TTY 1-888-874-7793) or through

<https://travel.state.gov/content/travel/en/News/passports/replacing-your-passport-after-the-storm.html>.

Passports that have water damage can no longer be used and should be replaced. You must apply in person to replace a damaged passport at an acceptance facility or at a passport agency. You will need the following:

1. The damaged U.S. passport
2. A signed statement explaining the damage
3. Form DS-11 (Application for U.S. passport)
4. Citizenship evidence* (e.g. birth or naturalization certificate)
5. A photocopy of citizenship evidence
6. Present ID (in person)
7. A photocopy of ID

8. One passport photo

9. Fees

Children under 16 must apply in person with both parents.

To replace a lost passport, you will need to apply in person and include the following:

1. Form DS-64 (Statement regarding lost or stolen passport)
2. Form DS-11 (Application for U.S. passport)
3. Citizenship evidence* (e.g. birth or naturalization certificate)
4. A photocopy of citizenship evidence
5. Present ID (in person)
6. A photocopy of ID
7. One passport photo
8. Fees

Children under 16 must apply in person with both parents. See Children Under 16 for more information.

*If your citizenship evidence was lost or damaged during the storm, and you are unable to replace them before applying for your passport, you can request a file search if you have previously been issued a passport.

12.14 Wills or other estate planning documents

If a will has been lost in a disaster, the person who made the will should make a new will. Alabama permits the probate of copies of lost wills in certain circumstances. In Alabama, if an original will was in the testator's possession and it cannot be found after the testator's death, there is a rebuttable presumption that the testator revoked the will (*Lovell v. Lovell*, 121 So.2d 901, 903 (Ala. 1960)). If an original will is lost, a copy may be admitted to probate if the proponent can show: (1) The existence of a will meeting the formalities required by law. (2) The loss or destruction of the will with no evidence that the testator intended to revoke the will. (3) The contents of the will in substance and effect. It is not necessary to prove the exact words of the lost will but only the substance of the will's contents. These requirements may be proved by a single witness who read the will or heard it read and remembers its contents. (*Lovell*, 121 So.2d at 903.)

If the original and all copies have been lost, a new will needs to be prepared and executed as the maker of the will will be deemed to have died intestate (without a will) and his or her property will be distributed under the laws of intestate succession. This may not always be the desire of the maker of the will. It can also complicate administration of the estate.

From a practical perspective, copies are not always legible, and any illegibility can make the will less than clear. Also, if the maker has, in response to the disaster, moved away for the area, those best able to make an affidavit to support the validity of the will may be difficult to locate.

12.15 Birth Certificates

The Alabama Center for Health Statistics began filing birth certificates in 1908 for persons born in Alabama. There are various methods to Obtain a Birth Certificate:

(1) Download Mail-In Application here:

<https://www.alabamapublichealth.gov/vitalrecords/assets/hs14eng.pdf> (also available in Spanish here: <https://www.alabamapublichealth.gov/vitalrecords/assets/hs14sp.pdf>)

By Mail: Send the above information and the appropriate fee to:

Alabama Vital Records
P.O. Box 5625
Montgomery, Alabama 36103-5625

In Person in Alabama: You may go to any county health department in the State of Alabama to obtain a certified copy of an Alabama birth certificate. Most birth certificates can be issued while you wait. A map showing locations of county health departments where vital records may be obtained is available. [View Reference Map](#)

To Order a Certificate Online: You may order certificates through a service provider called VitalChek using a credit card. Note that there are additional fees for using this service. Order a Certificate Online [Learn about birth certificate replacement here:](#)

<https://www.alabamapublichealth.gov/vitalrecords/birth-certificates.html>.

13.0 FAMILY LAW, CHILD WELFARE, AND FOSTER CARE ISSUES

13.1 Overview

This section provides information regarding family law issues including information for victims of violence, child custody, and protections for the elderly.

13.2 Summary of the Law

A. Protective Orders

One common way to combat domestic violence and other violence is by obtaining a protective order from a court. Alabama law authorizes the courts to issue protective orders for domestic violence, sexual assault, stalking, or trafficking. A protective order is a civil court order to prevent continued acts of violence.

Protective orders for family violence, sexual assault, stalking, or trafficking are issued under Alabama Code Section 30-5. They are enforced by Article 7A of the Alabama Code. Protective orders for sexual assault are discussed further in the “FAQ” section.

Family violence includes any intimate partner violence and violence from members of the same household. A hearing must be set within 10 days of the Defendant being served. [Alabama code § 30-5-6](#) An adult member of the family may file an application for a protective order to protect not only the applicant, but also any member of the applicant’s family or household. [Alabama Code § 30-5-5](#). An application for a protective order may be filed in the county where either the applicant resides, the respondent resides, or where the violence allegedly occurred or where the victim is temporarily located to avoid further abuse. [30-5-3](#). Certain violations of a protective order can be charged a criminal offense under [Alabama Code § 13A-6-142](#). Other violations can be punished by contempt of court and fined or jailed.

The duration of a protective order typically cannot exceed one year. However, in certain circumstances, the court can enter a protective order that lasts longer than one year and up to the duration of the lives of the offender and victim. Ala. Code § [30-5-7](#).

If a court finds, through information provided in the protective order application, that there is “immediate and present danger of abuse to the plaintiff or children“ the court may enter a temporary ex parte protective order. Ala. Code § 30-5-6.

An applicant can also file for a protective order during a suit for dissolution of marriage and during a suit affecting the parent-child relationship. Protective orders can do more than prevent violence. Protective orders may also establish possession of a child, prohibit the transfer of property, award property temporarily, require payment of child support, and require the abuser to vacate the residence. Ala. Code § 30-5-7.

B. Child Custody

In Alabama, custody refers to the rights and duties regarding the child and “possession” refers to access to the child. When an AL court is asked to issue an order affecting child custody, visitation, or support, the original petition filed is called a suit affecting the parent-child relationship (SAPCR). Determining whether Alabama has jurisdiction over a custody case may be complicated if the child has lived in multiple states. Prior to filing suit, it is important to know which state is the child’s “home state.” “Home state” is defined as the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding.

C. Powers of Attorney

A power of attorney (POA) may be a useful tool in the care of a child or an elder parent. A POA is a legal document that authorizes one person to take action on behalf of another person. The scope authorized in a POA can be very broad or limited to a specific purpose or transaction.

To assist in the caregiving of an elder parent, a person may wish to be able to have decision-making authority over the affairs of their elder parent. In this case, a person may wish to take control (1) immediately (*durable power of attorney*), (2) upon the incapacity or disability of an elder parent (*springing power of attorney*) or (3) when a medical treatment decision arises and the elder parent is mentally or physically unable to make a decision (*medical power of attorney*).

In order for a POA to be legally enforceable, an adult must acknowledge the authorization of power in writing in the witness of a notary public or other person authorized to “take acknowledgments to deeds of conveyance” or “administer oaths.”. By default, the durable POA will stay in effect until revoked by the elder parent or until such elder parent dies.

D. Family Law and COVID-19

The COVID-19 pandemic presents unprecedented challenges in the area of family law. Below is a brief summary of how family law issues are being affected by COVID-19 and the resulting Alabama courts orders, closures and updates.

13.3 FAQs

A. Domestic Violence/Sexual Assault

Q. 13.1: What do I do if I lost the physical copy of my protective order in a disaster and it is not in the police database?

You can obtain certified copies of your protective order by contacting the court clerk for the court that issued your order. Copies of the protective order should also have been sent to your local law enforcement by the court issuing your order.

If you believe your protective order is being violated, you can immediately call 9-1-1. In Alabama, a police officer may arrest the violator if the police officer believes he has probable cause to arrest the person for violation of your protective order. The presentation of PFA order constitutes probable cause. If Defendant has no knowledge of the PFA order, then the officer must inform him of the order and allow the person reasonable opportunity to comply. Ala. Code § 13A-6-143.

Alternatively, a motion for enforcement of your protective order can be filed with the court with original jurisdiction over the protective order, or any county where either the parties reside or where an alleged violation occurred, and the court has the authority to hold the protective order violator in contempt.

Further, if you relocated to Alabama after a disaster and have a protective order that was issued by a court in a different state, it is still enforceable. According to 30-5b-3. A foreign protection order is valid if it identifies the protected individual and respondent, is currently in affect and was issued by tribunal that had jurisdiction over the parties. Ala. Code § 30-5b-3.

Although not required, it is good practice to keep multiple copies of the protective order, including an electronic version stored on your phone or email. And, if your protective order has been violated, regardless of where the violation occurred or what state you reside in, you can call the police immediately.

Q. 13.2: I had to relocate to a different state following a disaster. Is my protective order still enforceable?

Likely yes. The Violence Against Women Act (VAWA) states that a foreign protective order that meets federal requirements “shall be accorded full faith and credit by the court of another State . . . and enforced . . . as if it were the order of the enforcing State” 18 U.S.C. § 2265(a). A protective order meets federal requirements if (1) the issuing court had jurisdiction over the parties and matter and (2) reasonable notice and opportunity to be heard was given to the respondent. 18 U.S.C. § 2265(b).

Further, you generally do not need to register or file the protective order in the new state for it to be enforceable. 18 U.S.C. § 2265(d)(2). However, some states do have specific rules regarding registration and filing of protective orders, which may make enforcement easier. Consult an attorney or the laws of the state you relocate to in order to make sure you are in compliance.

If you have relocated to Alabama, your foreign protective order will be judicially enforced if the order is valid on its face. Ala. Code § 30-5B-3. A foreign protection order is valid if it identifies the protected individual and respondent, is currently in affect and was issued by tribunal that had jurisdiction over the parties. Ala. Code § 30-5b-3. A law enforcement officer will enforce a protective order when there is probable cause that a protective order exists and it has been violated. You do not need to register or file your protective order in Alabama in order for it to be enforced.

Q. 13.3: I had to evacuate my home. Where do I go to modify my child’s custody or support order?

After an Alabama state court has made a custody determination, that same court maintains exclusive continuing jurisdiction for all future modifications and determinations surrounding a child, unless the child and both parents leave the state or neither the child nor one parent maintains a significant connection with the state. If the child still lives in Alabama, but has moved to a different county the original court has jurisdiction to modify the order. Ala. Code § 30-3-5.

Q. 13.4: What if my child’s other parent refuses to pay child support after the disaster?

When circumstances change, a parent paying child support can ask the court to modify the child support order. The standard for modification under is there a “material and substantial change in the circumstances of a child or a person affected by the order,” but the parent must file for a modification with the court in order for it to be effective and must continue paying the support in the current order until the modification is granted.

If the parent does not take these steps, he or she is still under a legal duty to pay child support. If the parent is not paying child support, contact the Child Support Division of District Attorney’s Office for help filing an enforcement action.

Q. 13.5: If I can’t find my Protective Order, divorce, or custody court papers, where can I get copies of them?

Go to the Clerk’s office at the Courthouse where the TPO, Divorce, Custody or other order was entered.

Q. 13.6: If I am a victim of domestic violence where can I get help for shelter, safety planning, or other resources?

The Alabama 24-hour DV Help Line is available at 1-800-650-6522.

Q. 13.7: If I need help with my benefits after a disaster where can I get help?

If you are a Senior or Disabled Alabamian or if you are a family member and need assistance with SNAP or Medicaid, or other Benefit you can contact the Department of Human Resources at dhr.alabama.gov or Benefits Hotline at 1-800-997-8888 for more information

14.0 EDUCATION

14.1 Overview

This section addresses issues arising with students who are homeless or displaced after a natural disaster.

14.2 Summary of the Law

Federal law provides protections for students who are homeless or displaced as the result of natural disasters. *See* 42 U.S.C. § 11434a. The federal McKinney-Vento Act defines ‘homelessness’ as it applies to public school students in pre-Kindergarten through the 12th grade. *See id.* § 11434a(2). Under this law, the definition of ‘homelessness’ includes children and youth who do not have a regular and adequate nighttime residence and specifically applies to children and youth residing in shelters, transitional housing, cars, campgrounds, trailer parks, hotels, motels, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, and staying with friends or family temporarily as a result of economic hardship, loss of housing, and natural disasters. *See id.* § 11434a(2)(A)-(B). Families and youth living with others on a temporary basis and unable to return to their homes because of a disaster would even be considered homeless under the Act. *See id.* § 11434a(2)(B).

A. Homeless/Displaced students are entitled to immediate enrollment

McKinney-Vento guarantees the right of homeless students to enroll immediately in the public school which serves the attendance area where the student is staying temporarily. *See id.* § 11432(e)(3)(E)(i)(II). Additionally, a homeless child has the option to reside in the child’s school of origin or in any public school in the attendance area where the child is actually living depending on the best interest of the child. *Id.* § 11432(g)(3)(A) and (B).

B. Homeless/Displaced students can enroll without documentation

Students displaced as a result of a natural disaster are entitled to immediate enrollment in public school even if they don’t have the documentation typically required for school registration, like proof of residency, birth certificates, immunization and health records, etc. *See* 42 U.S.C. § 11432(g)(3)(C)(i)-(ii). In fact, enrolling schools are required to help students obtain these important documents. *See id.* § 11432(g)(3)(C)(ii)-(iii). English Language Learners (ELLs) who enroll without documentation from their previous school should be provided protections that allow access to appropriate programming. *See id.* § 11432(g)(4)(B). Conversations with parents and the students and review of documentation within their possession will assist in this inquiry.

C. Homeless/Displaced students are entitled to additional protections

First, under the McKinney-Vento Act, homeless students are specifically eligible for free school meals without delay. *See id.* § 11432(e)(3)(C)(i)(III)(cc). Second, homeless students have the right to go back to their “school of origin” (the school they attended before the disaster) and the school district must generally provide transportation to and from their “school of origin” if a

parent or guardian makes a request. *See id.* § 11432(g)(1)(J)(iii). Students who enroll in a new school district as a result of displacement by a natural disaster must receive transportation services that are comparable to the transportation services that other regularly housed students receive. *See id.* § 11432(g)(4)(A). Next, school districts must assess the needs of homeless students and refer those students and their families to appropriate local resources, including health, mental health, dental, and other community-based supports and services. *See id.* § 11432(g)(6)(A)(iv). Third, homeless students are entitled to fully participate in any school and extracurricular activities. *See id.* § 11432(g)(1)(F)(iii). Finally, if a receiving school does not agree that a homeless student is eligible to attend that school, the student has the right to remain enrolled pending any appeals, to receive a written explanation of the reasons for the district's objections to enrollment, and to receive assistance from the district's homeless liaison to dispute the school's decision regarding school selection and enrollment. *See id.* § 11432(g)(3)(E).

D. Every school district is required to designate a Homeless Liaison

Every school district in Alabama is required to have a homeless liaison who is responsible for coordinating efforts to assist and support homeless students. *See* 42 U.S.C. § 11432(g)(1)(J)(ii). Alabama maintains a current directory of these liaisons and contact information: <https://www.alsde.edu/sec/fp/Pages/homelessliaison-map.aspx>. These local liaisons are required to undergo training and receive professional development to build their capacity to properly implement the McKinney-Vento program.

E. Special Education

Homeless status is exclusive of special education identification, thus special education programming follows the student to any school in which he or she enrolls. *See* 42 U.S.C. § 11432(g)(4)(B). Parents who are forced to enroll a student with a disability in a different district because of displacement due to a disaster are entitled to the same and comparable services as previously received. *See id.*

A parent should disclose that his or her child was previously receiving special education services upon enrollment, to ensure expedited special education services. *See* National Association of School Psychologists, *Natural Disasters and Relocated Students With Special Needs*, <https://www.nasponline.org/resources-and-publications/resources/school-safety-and-crisis/natural-disaster/natural-disasters-and-relocated-students-with-special-needs> (last visited Oct. 1, 2018). For students with disabilities who enroll with missing or incomplete special education records, school districts must ensure those students receive a free appropriate public education (FAPE) by using whatever information is available at the time of enrollment, including but not limited to records provided by the parent, interviews with the parent and student and conversations with the student's medical and/or mental health providers. *See* 42 U.S.C. § 11432(g)(5)(D). For a student who has not been identified as eligible for receiving special education services under IDEA (Individuals with Disabilities Educational Act) and is experiencing educational difficulties after a disaster, parents may consider identification under Section 504 of the Rehabilitation Act. Section 504 provides a wider definition of an individual with a disability

and allows accommodations and supports within the education environment, which may be appropriate for a trauma based diagnosis. *See* 29 U.S.C. § 701.

15.0 IMMIGRATION

15.1 Overview

The source of relief that a victim of a disaster may receive will sometimes depend upon their citizenship status. Some organizations provide unrestricted relief while others restrict relief only to United States citizens and qualified aliens. This section discusses those differences.

15.2 Summary of the Law

Unrestricted Relief

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

When a big disaster hits an area, the federal government may declare it a “disaster area.” The Federal Emergency Management Agency (FEMA) provides emergency services in places the federal government has declared disaster areas. FEMA provides some unrestricted emergency services. It provides short-term, noncash, emergency help to disaster victims no matter what their immigration status is. For example, FEMA warns people about dangers, helps them leave dangerous places, and searches for lost people and rescues them. FEMA also provides transportation, emergency medical care, crisis counseling, and emergency shelter to whomever needs them. And it provides emergency food, water, medicine, and other supplies to meet disaster victims’ basic needs.

Restricted Relief

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

Examples of restricted services include:

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

Who are “qualified aliens”?

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

Public Charge Facts

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

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

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

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

15.3 FAQs

Q. 15.1: Can a family that contains members with different citizenship statuses obtain relief?

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

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

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

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

Q. 15.2: What can an immigrant who has lost identification or other documents proving his lawful status do?

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

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

16.0 PETS AND ANIMALS

16.1 Overview

In disaster situations, evacuations can be a primary mechanism used to protect human lives. Unfortunately for individuals with animals such as pets, service animals, or livestock, the evacuation process can become even more complicated. This chapter addresses the legal rights of evacuees with respect to their animals – both domestic pets and livestock – and provides practical information and suggestions to help evacuate disaster situations safely and expediently.

There is little legal guidance in Alabama for helping pet and livestock owners care for their animals in evacuation situations. Therefore, this chapter attempts to address concerns by pointing individuals to the proper manuals and resources.

16.2 Summary of the Law

The Pets Evacuation and Transportation Standards Act

The federal Pets Evacuation and Transportation Standards (“PETS”) Act, 42 U.S.C. § 5196a-d (2006), is a bi-partisan initiative passed in 2006, after thousands of pets and other animals were abandoned during Hurricane Katrina. The PETS Act was enacted to ensure that FEMA is authorized to provide shelter and care during a major disaster or emergency to not only people, but also their service animals and household pets. The PETS Act also enables FEMA to provide funding to states for creating, operating, and maintaining pet-friendly emergency shelters and enacting plans for pets and service animals during disasters or emergencies. Additionally, the Act allows FEMA to reimburse state and local governments for costs associated with caring for animals during crises. Contrary to popular belief, the Act does not require hotels or motels to accept evacuees’ animals, and most public shelters established during disaster situations will not accept pets or other animals, although service dogs are typically allowed.

Alabama has helpful resources for preparing pets and large animals for emergencies. <https://www.readyalabama.gov/ready-pets>.

Disaster Planning for Pets and Service Animals

An emergency shelter that is completely accessible to wheelchairs will be inadequate (and in violation of the ADA) if it refuses to allow service animals. Another way that covered entities ensure equal access is by making reasonable modifications to policies, practices, and procedures when necessary. Emergency managers, shelter operators, and other covered entities need to be ready to make these modifications to avoid discrimination. One example is modifying a “no pets” policy to welcome individuals with a disability who use service animals.³

³ See <https://adata.org/service-animal-resource-hub/emergencies>.

For additional information about emergency and disaster relief preparedness for people traveling with service dogs, visit the International Association of Assistance Dog Partners.⁴

The Humane Society of the United States provides resources for pet owners to prepare for disaster situations and tips for how to care for pets when evacuating or sheltering in place.⁵ These resources include a disaster supply checklist for caring for pets in an evacuation scenario. The most important items to remember for a disaster preparedness kit for pets are medications and medical records, sturdy leashes, harnesses, and carriers for transportation, and food and water for at least three days for each pet.

Alabama residents who evacuate to other states will follow similar procedures in those states (i.e. prepare a disaster kit in advance, look for pet-friendly shelters or hotels, etc.). Below are helpful links for state-specific animal and health requirements for neighboring states:

- Georgia – Animal Import Requirements: <http://www.agr.georgia.gov/animal-health.aspx>
- Florida – Animal Movement Requirements: <https://www.fdacs.gov/Agriculture-Industry/Livestock/Animal-Movement>
- North Carolina – Import/Export Requirements for Dogs, Cats & Ferrets (North Carolina Division of Public Health): <https://epi.dph.ncdhhs.gov/cd/diseases/importexport.html>; Import/Export
- South Carolina – Animal Import Requirements: <https://www.clemson.edu/public/lph/ahp/import/index.html>
- Tennessee – Import Requirements (Tennessee Department of Agriculture): <https://www.tn.gov/agriculture/businesses/animals/animal-health/import.html>

Disaster Planning for Livestock

The leading causes of death of livestock during hurricanes and similar natural disasters are collapsed barns, dehydration, electrocution, and fencing-related accidents.

There are several things livestock owners can do to plan in advance for their animals' safety during an evacuation. To start, owners should determine how they will evacuate and decide whether their livestock will evacuate with them or will be housed at a pre-arranged evacuation

⁴ <http://www.iaadp.org/disaster.html>.

⁵ See, e.g.

http://www.humanesociety.org/assets/pdfs/disaster/disaster_preparedness_pets.pdf, which provides emergency and disaster planning information as it relates to the care of pets, as well as tips for how to care for pets if evacuation is required during a disaster and when sheltering in place.

locale.

If livestock cannot be transported, owners should contact local vets, barns, stockyards, and similar businesses to learn their policies and availability to temporarily take in livestock during an emergency. If the plan involves evacuating with livestock, owners should plan at least a few potential evacuation routes in advance. If owners do not already own trailers or other vehicles with which to move their livestock when fleeing, they should explore options for renting vehicles nearby. The Humane Society advises people to leave no later than 72 hours before anticipated landfall for slowly-developing natural disasters such as hurricanes, especially if evacuees will be hauling a large vehicle like a horse trailer. The Humane Society also has resources barn fires as they relate to horses,⁶ as well as brochures that provide information regarding livestock and disasters.⁷

The United States Department of Agriculture (USDA) recommends owners prepare a livestock evacuation kit that includes feed, water, supplements, supplies (medications, rope/lariat, halters/leads, cleaning supplies, knives, etc.). It is also important to have documents showing proof of ownership and medical records for their livestock. These documents may include registration papers and photographs as well.

16.3 Pet-Friendly Hotels

For a list of pet-friendly hotels in the event of an evacuation:

Bring Fido:

- <https://www.bringfido.com>

Pets Welcome:

- <https://www.petswelcome.com>

Trips With Pets:

- <https://tripswithpets.com>

Go Pet Friendly:

- <https://www.gopetfriendly.com>

DogFriendly.com:

- <https://www.dogfriendly.com>

⁶ See http://www.humanesociety.org/assets/pdfs/disaster/disaster_preparedness_horses.pdf.

⁷ See

http://www.humanesociety.org/assets/pdfs/disaster/disaster_preparedness_livestock.pdf;
http://www.humanesociety.org/about/departments/disaster_preparedness.htm.

16.4 Lost pets

If you have lost your pet, check with your local shelter. It is always best to visit the shelter in person in case your pet did not have (or lost) an ID tag.

Greater Birmingham Humane Society:

- <https://gbhs.org>

Montgomery Humane Society:

- <https://www.montgomeryhumane.com>

Mobile SPCA:

- <https://www.mobilespca.org>

Greater Huntsville Humane Society:

- <https://ghhs.org>

East Alabama Humane Society:

- <https://www.eahs4pets.com>

Humane Society of West Alabama:

- <https://www.humanesocietyofwa.org>

Pet owners can also check the following websites to help locate a lost pet:

The Center for Lost Pets:

- <http://www.thecenterforlostpets.com>

FidoFinder:

- <https://www.fidofinder.com>

PetHarbor:

- <http://petharbor.com>

Petfinder:

- <https://www.petfinder.com>