

# Legal Challenges After a Natural Disaster: Helping Older Adults Face the Aftermath

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## The National Consumer Law Center

The National Consumer Law Center (NCLC) uses its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults and people of color. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

## Legal Services of North Florida

Legal Services of North Florida (LSNF) provides civil legal assistance to low-income and vulnerable individuals throughout 16 counties in the Florida Panhandle. LSNF serves the legal needs of children, older adults, victims of abuse, veterans, and people with disabilities on cases involving Family Law, Housing, Public Benefits, Consumers, Employment, Education, Health Care, and Disaster Recovery. Legal Services of North Florida has a lengthy history in responding to disasters in the service area, including multiple hurricanes, the Deepwater Horizon Oil Spill, flooding, and tornadoes.

## Key Lessons

1. Homeowners trying to repair their homes after a disaster should seek to avoid contractor fraud.
2. After a disaster, door-to-door sales scams are common.
3. Post-disaster homeowner's insurance fraud also presents challenges to consumers
4. The distribution of homeowner's insurance proceeds is dependent on the loan investor.
5. Homeowners in a disaster area must work with their mortgage servicer to ensure short-term and longer-term payment arrangements are made.
6. After a disaster, homeowners should pursue assistance from FEMA and other federal and state sources of funding at the same time that they work with their mortgage company.
7. Consumers and their advocates should seek support from legal assistance organizations after a disaster.

## Homeowners Trying to Repair Their Homes After a Disaster Should Seek to Avoid Contractor Fraud

After a disaster, when survivors are vulnerable, dishonest contractors often try to take advantage of homeowners. Common scams include: showing up at the homeowner's residence and offering low bids as a "special limited time offer;" beginning work before having a contract; using substandard material and charging for standard material; accepting a down payment and doing only a small amount of work and then disappearing; and showing up at a homeowner's door and using high pressure tactics to force the homeowner to make a quick decision before "prices go up" or "material runs out." **Homeowners should take care to read contracts**

**carefully, to refuse to sign a contract that has blanks, to get multiple estimates or bids, and to hire a licensed contractor.**

In most states, construction liens are permitted for those who work on homeowner's property or provide material and are not paid in full. If the contractor fails to pay the subcontractors or fails to pay for material, the workers who are owed money can *also* look to the property for payment, even if the homeowner paid the contractor in full. If a construction lien is filed against the property, the property could be sold against the homeowner's will for services, labor, or material, which the contractor failed to pay.

Homeowners can take action to protect themselves. A release of lien is a written statement that removes the property from the threat of lien. Before making payments, a homeowner should receive this waiver from suppliers and subcontractors covering the materials used and work done.

## After A Disaster, Door-To-Door Sales Scams Are Common

Consumers have a right to cancel sales on door-to-door home improvement purchases. Door-to-door home improvement scams often increase in the aftermath of a disaster. If someone purchases a product or service, and then has second thoughts, and the product costs more than \$25, the purchaser has a right to cancel the sale within three days. Common door-to-door scams post-disaster include construction, debris removal, roofing or tarping a roof, mold removal, and tree removal. Remedies are available under federal law and most state laws.

## Post-Disaster Homeowner's Insurance Fraud Also Presents Challenges to Consumers

Homeowners should be cautious when reviewing assignment of benefits agreements. An assignment of benefits is an agreement that, once signed, transfers a person's homeowner's insurance rights or benefits to a third party. In most cases, post disaster, that third party is a building contractor. With the assignment of benefits, the contractor can file an insurance claim, make repair decisions, and collect insurance benefits without the involvement of the homeowner. Because of the potential for harmful consequences, such as losing all the rights to their own insurance claim, homeowners should be careful before signing. States have different laws covering assignment of benefits. For example, in Florida, the law was revised in the 2019 legislature after an abundance of complaints and abuse from unscrupulous contractors. The assignment must contain some specific language and must contain three cancellation provisions.

## The Distribution of Homeowner's Insurance Proceeds is Dependent on the Loan Investor

Filing a claim with the insurance company is often one of the first steps during disaster recovery. Filing claims for losses, including homeowner, flood, health, and auto insurance is necessary to receive FEMA benefits. Mortgage loans require borrowers to maintain homeowner (or hazard) insurance to protect the lender's interest in the property. The scope of the coverage and the homeowner's rights are outlined in the insurance policy, including use of the proceeds for the repair or replacement of the home. Homeowner's insurance typically does not cover flood damage, though it may cover water damage inside the home.<sup>1</sup> The rules vary for the distribution of insurance proceeds and are often based on whether the mortgage was current or in default when the disaster occurred. Because the lender or servicer is also a payee, it effectively controls the disbursement of the proceeds to the borrower.

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<sup>1</sup> The National Flood Insurance Program offers flood insurance coverage. More information on the National Insurance Flood Program is available at [floodsmart.gov](https://www.floodsmart.gov).

There are also special rules regarding the distribution of insurance proceeds after disasters.

Generally, insurance proceeds will be applied to the restoration of the property as long as the restoration and repair are “economically feasible” and the lender’s “security is not lessened.” If the repairs do not satisfy both conditions, then the security instrument directs the lender to apply the insurance proceeds to the debt. The term “economically feasible” is not defined in the instrument, and there is no explanation of what it means to lessen the security. Most courts have interpreted the term to mean whether the cost of repairs will exceed the insurance proceeds, and whether the value of the repaired home will at least exceed its value prior to loss. If the proceeds are to be used for restoration and repair, the servicer may disburse proceeds in a single payment or in a series of progress payments as the work is completed. Typically, disbursement schedules call for the release of one third of the proceeds up front, the next one third at 50% completion (and after inspection), and the last one third at completion (and after inspection).<sup>2</sup>

## Homeowners in a Disaster Area Must Work With Their Mortgage Servicer to Ensure Short-Term and Longer-Term Payment Arrangements Are Made

After a disaster, homeowners may struggle to pay their mortgage or meet other obligations under a conventional or reverse mortgage.<sup>3</sup> Homeowners should immediately identify the type of loan and investor for the mortgage so they can determine which rules apply for making payment arrangements (see practice tip section). They also should find out whether the property is in a presidentially-declared disaster area. (See practice tip below for more information).

If the disaster impacts the homeowner’s ability to make timely mortgage payments, the loan servicer may offer forbearance, a period of reduced or suspended payments. The servicer may initially offer a forbearance of up to three or six months; that period may be extended to a year with financial and other documentation of continuing hardship. At the end of the forbearance period, the borrower must bring the loan current or enter into a repayment plan or other option discussed below. Late fees typically are not added to the account during the forbearance period. The availability of this option will depend on guidelines established by the owner or insurer of the mortgage loan.

The ancillary and other costs associated with evacuating and recovering from a disaster may deplete money set aside to pay the mortgage. The loan servicer will offer loss mitigation (also known as “workout”) options to homeowners who are unable to bring a loan current at the end of a forbearance period, or who continue to suffer hardship. These options will help the homeowner avoid foreclosure by modifying the terms of the loan to reduce the monthly payment, or facilitate the sale of the home for less than the amount due (“short sale”) or return the property to the lender, known as a deed-in-lieu of foreclosure. The homeowner should contact the loan servicer to begin the loss mitigation or workout process.

## After a Disaster, Homeowners Should Pursue Assistance From FEMA & Other Federal & State Sources of Funding at the Same Time That They Work With Their Mortgage Company

FEMA provides housing assistance to individuals and families who have lost their homes as a result of a presidentially-declared disaster. By law, FEMA assistance cannot duplicate the assistance received from insurance coverage, but homeowners may receive assistance for items not covered by insurance. Generally speaking, an

<sup>2</sup> For current loans with loss proceeds in excess of \$40,000, Fannie Mae requires installment distributions up to \$40,000 or 10% of the unpaid principal balance, whichever is greater. Fannie Mae, Single-Family Servicing Guide section B-5-01, Insured Loss Events (Apr. 12, 2017).

<sup>3</sup> Reverse mortgage loans allow older borrowers to convert home equity into cash without having to move out or make periodic mortgage payment. Homeowners are responsible for paying taxes and insurance. For more information on reverse mortgages, please see NCLER’s issue brief, available at: [ncler.acl.gov/pdf/Reverse-Mortgage-Servicing-Foreclosure-Emerging-Issues.pdf](https://ncler.acl.gov/pdf/Reverse-Mortgage-Servicing-Foreclosure-Emerging-Issues.pdf).

applicant for assistance will receive a call from FEMA within 10 days of submitting the application in order to schedule an appointment for a home inspector visit, although it may take longer in catastrophic disasters. Some housing assistance funds are available through FEMA's Individuals and Households Program. Most disaster assistance from the federal government is in the form of low-interest disaster loans administered by the Small Business Administration.

FEMA housing-related assistance includes: Temporary Housing (a place to live for a limited period of time); Lodging Expenses Reimbursement; Repair; Replacement; or Permanent or Semi-Permanent Housing Construction. Money to repair or replace a vehicle, to assist with medical, dental, or funeral expenses, and other types of non-housing related needs are also available.

Individuals can apply for assistance at [www.disasterassistance.gov](http://www.disasterassistance.gov); on the [FEMA Mobile App](#), or by calling 800-621-FEMA (3362). People who are deaf, hard of hearing, or have a speech disability and use a TTY may call 800-462-7585. FEMA's Disaster Recovery Centers also accept in-person applications and provide program information. Individuals have 60 days from the date of the federal declaration to apply for assistance, though the deadline may be extended. FEMA may require documents pertaining to ownership of the home, income loss, and/or the applicant's housing situation prior to the disaster. An applicant will usually receive a call from FEMA within 10 days of submitting the application to schedule an appointment for a home inspection. Homeowners who disagree with FEMA's determination of eligibility or the form of assistance provided can appeal the decision within 60 days of the date on the determination letter. Other forms of financial or housing-related assistance may be available from the state and local government.

## Consumers & Their Advocates Should Seek Support From Legal Assistance Organizations After a Disaster

After a disaster, legal help is available for low-income consumers beginning with the local legal services/legal aid organization. Every state, the District of Columbia, and US territory has at least one legal aid program that covers low-income and vulnerable clients. A list of legal aid organizations can be found through the [Legal Services Corporation](#). The [Eldercare Locator](#) also has information about the Older Americans Act III-B legal assistance available in each county. In addition, the [Disaster Legal Hotline](#) goes live after a Presidentially declared disaster. The attorneys on the hotline can answer questions about insurance claims, FEMA appeals, home ownership, problems with landlords, home repair, and other disaster related questions. ABA Free Legal Answers is another online location for clients who are low-income to post civil legal questions or request brief advice about a specific legal issue. There is no fee for using the program and it is available for most states. Additionally, consumers can obtain legal help by calling their state's senior legal hotline.

### PRACTICE TIP 1

There are some tools to quickly determine investor identity in addition to making a written request. Fannie Mae and Freddie Mac, who combine to have the largest share of the mortgage market, have easy loan look-up websites to determine if they own a mortgage.<sup>4</sup>

To determine if a loan is FHA-insured, look for an FHA case number on the mortgage document, specific language in the mortgage and note forms, or the payment of an FHA premium on the mortgage statement. In some cases, unfortunately, loans may have been stripped of their FHA-insured status; call HUD's National Servicing Center if there are questions at 877-622-8525.

<sup>4</sup> See [ww3.freddiemac.com/loanlookup/Freddie Mac Loan Lookup](http://ww3.freddiemac.com/loanlookup/Freddie%20Mac%20Loan%20Lookup) and [knowyouroptions.com/loanlookup#Fannie Mac Loan Lookup](http://knowyouroptions.com/loanlookup#Fannie%20Mac%20Loan%20Lookup).

A VA-guaranteed loan also has specific language in the note and mortgage, and there are fees paid to the VA noted in closing documents. While a borrower with a mortgage directly from RHS will be very familiar with the agency, homeowners with privately serviced RHS-guaranteed loans often do not know the loan's status. If a RHS-guaranteed loan is suspected, directly ask the servicer to review the homeowners' closing documents.

Unfortunately, some homeowners will have loans owned by other investors, and these investors will not have clear and publicly available rules for loan modifications and disaster relief. Advocates working with these borrowers should contact the servicer and ask for help. In cases where loan servicers are not helpful, consider escalating the case within the loan servicer and also contact their elected officials.

## PRACTICE TIP 2

Community education and outreach to senior and low-income communities before a storm or other disaster may prevent some from entering into contracts with unlicensed and unscrupulous contractors and other post-disaster scam artists. Many of the contractors and others that arrive in a community after a disaster are not local, are not licensed, and, once they leave the community, are difficult to locate. Consumers should fight back by getting several bids, hiring local or well established and licensed contractors, reviewing contracts carefully and not signing blank contracts, not paying a contractor in full before work is completed, and not paying in cash.

## Additional Resources

- Federal Agencies
  - » [Consumer Financial Protection Bureau](#)
  - » [Federal Housing Finance Agency](#) (oversees Fannie Mae and Freddie Mac)
  - » [U.S. Department of Housing and Urban Development, Federal Housing Administration](#)
- Housing Counseling
  - » [HUD-approved housing counseling agency](#)
  - » [HOPE NOW](#)
- State Agencies
  - » State Insurance Commissioners
    - [National Association of Insurance Commissioners membership list](#)
- State Attorneys General
  - » [National Association of Attorneys General](#)
- Legal Assistance & Resources
  - » [Find local legal services](#)
  - » [Your state's Disaster Legal Hotline](#)
  - » [ABA Free Legal Answers](#)
  - » Senior Legal Hotline in your state
  - » Lawyer Referral Services
  - » [LawHelp.org for states](#)

- Publications related to disasters
  - » National Consumer Law Center: [Obtaining Mortgage Relief for Victims of Disasters](#)

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**Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).**

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