

# Legal Challenges in Emergencies: Helping Older Adults Facing Public Health Emergencies and the Aftermath of Natural Disasters

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# Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to [NCLER@acl.hhs.gov](mailto:NCLER@acl.hhs.gov).
- Written materials and a recording will be available at [NCLER.acl.gov](http://NCLER.acl.gov). See also the chat box for this web address.

# About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

# NCLER COVID-19 Response

- ACL Document: [Legal Assistance for Older Americans & COVID-19](#)
- Upcoming Training:
  - March 25th: Strategies for Providing Remote Legal Services to Older Adults
- Legal Helpline Support
- Technical Assistance & Case Consultations

# About NCLC

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used 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, in the U.S.

NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services; and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

# About LSNF

Legal Services of North Florida 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

- After a disaster or emergency, older adults may be affected by scams and fraud.
- Homeowners insurance distribution presents challenges to consumers.
- Homeowners in a disaster area or in an emergency situation must work with their mortgage servicer to ensure short-term and longer-term payment arrangements are made.
- Consumers and their advocates should seek support from legal assistance organizations after a disaster or emergency.

# COVID-19

- Presidential Emergency Declaration—Disaster Declaration?
- Legislation is Evolving Daily
- Existing Regular Hardship Options Apply
  - Housing Agencies Encouraging Use of Existing Options
- Fraud Opportunities May Arise
- Attend to Debt and Credit Reporting



# Older Adults and Disaster Fraud

# Disaster Fraud

- Disaster fraud is an illicit activity that occurs after a natural or man-made disaster or catastrophe that is designed to defraud individuals or organizations.
- Older adults are sometimes at an increased risk due to limitations in mobility and access to transportation and/or because of a cognitive impairments, lack of social support, decreased psychological well-being, and lower literacy.

# Consumer Problems Encountered after a Disaster



Contractor  
Scams



Insurance  
Fraud



Assignment  
of Benefits



Price  
Gouging



Forgery



Door to  
Door Sales



Fake  
charities

# Contractor Scams—Examples

- The “low-ball” bidder whose price is much less than everyone else’s
- Insist on cash payment – to get the work started quicker
- Presents a contract for signature with blanks
- Contractor takes the down payment and finishes only part of the work, or worst yet, does no work
- Contractor uses cheap material and does shoddy work
- Convinces homeowner to sign over their insurance claim to the contractor

# Contractor Liens

- A contractor's lien is a **claim made against a property** by a contractor or other professional who has supplied labor or materials for work on that property.
- If the contractor is not paid in full, they can look to the property for payment.
- If the contractor does not pay for materials or does not pay the subcontractors, these people can look to the homeowner for payment, even if the contractor has been paid in full.
- If a lien is filed against the homeowner's property, then the property can be sold to pay for labor, materials, or other services that the contractor did not pay.

# Remedies

- File a complaint with the governmental authority in the state that licenses and regulates contractors
  - For example, in Florida, if you wish to file a complaint against a contractor, you may contact the Department of Business & Professional Regulation [online](#) or by phone at (850) 487-1395.
  - Additionally, you should file a complaint with the Attorney General's Office [online](#) or by phone toll-free at 1-866-9-NO-SCAM.
  - You may also file a complaint with the [Florida Department of Agriculture and Consumer Services](#), which acts as the State's consumer complaint clearinghouse.

# Remedies Cont.

- Florida Deceptive and Unfair Trade Practices Act—the Florida Attorney General is the civil enforcing authority for violations of FDUTPA but individual remedies are also available including recovery of actual damages, plus attorney’s fees and court costs.
- Enhanced penalties for violations involving senior citizens, persons who have a disability, military service member or their spouse or dependent child.
- Insist on release of all liens that could be placed on the property from all subcontractors before making a final payment. Do not sign a certificate of completion or make a final payment until all work is performed and completed.

# Insurance Fraud/Assignment of Benefits

- An Assignment of Benefits (AOB) is an agreement once signed that transfers a person's insurance rights or benefits to a third party.
  - In most cases that third party is a building contractor.
- The contractor can file a claim, make repair decisions, and collect insurance benefits without the involvement of homeowner.



# Assignment of Benefits: Consequences

- Consumers should keep in mind that signing an AOB gives the rights and benefits of their insurance policy to the contractor.
- The insurance company may only be able to communicate with the contractor and the owner loses all rights to the claim.
- The contractor may be able to endorse checks on behalf of homeowner and even file a suit against the insurance company.

# Assignment of Benefits: Required Language

- In Florida and likely in other states as well, the AOB must include some very specific language, for example:
  - A written, itemized per unit cost estimate of the services
  - It must include a notification in 18 point Font that homeowner is giving up certain rights under the policy
  - It must prohibit the contractor from seeing payment in excess of deductible unless homeowner agreed to have additional work performed

# Assignment of Benefits: Contract Requirements

- In Florida, the AOB is a legal contract and must contain three cancellation provisions
  - Rescind within 14 days following execution by notifying contractor in writing
  - Rescind within 30 days if the AOB does not have a commencement date and contractor has not begun work
  - Rescind if contractor has not substantially performed at least 30 days following the scheduled commencement date

# Assignment of Benefits: Remedies

- Rescind the assignment of benefits within 7 business days of executing the agreement or within 30 days after the work is scheduled to commence if the contractor has not substantially performed.
- Legal action—if contractor will not agree to release the homeowner from the contract, the only resolution is to file suit.

# Door-to-Door Sales

- Door-to-Door home improvement scams often increase in the aftermath of a disaster.
- If you do purchase a product or service, have second thoughts, and the product costs more than \$25, you have the right to cancel the sale within three days.
  - Once the seller gets notice, seller has 10 days to refund your money, return documents you signed, and return any goods you traded in. Seller can not retain any portion of your money.
  - If the seller has left product with the buyer, seller has 40 days to pick up product.
  - If seller did any work during the cancellation period and the contract was properly canceled, the seller is not entitled to any compensation for the work.

# Door to Door Sales: Remedies

- A violation of the FTC Cooling-Off Rule and the Florida Home Solicitation Act is a *per se* violation of DUTPA pursuant to Florida Statute §§501.203(3)(a), (b) and (c)
  - Declaratory relief
  - Injunctive relief
  - Damages in an amount to be determined by the Court
  - Attorney's fees and court costs pursuant to Florida Statute §501.2105

# Price Gouging

- Price Gouging is selling essential commodities during a state of emergency that greatly exceeds the average price for that commodity during the 30 days before the declaration of the state of emergency.
  - Examples of necessary commodities are food, ice, gas, and lumber.
  - It is not considered price gouging if the seller can show an increase in the price of their supplies or market trends.
- Price gouging begins upon a declaration of a state of emergency and is effective not more than 60 days unless there is a renewed state of emergency.

# Price Gouging: Remedies

- File a Complaint
  - Report suspected price gouging during a declared state of emergency to the Florida Attorney General's office online at or by calling toll free at 1-866-9-NO-SCAM.
  - Not all states have price gouging statutes. For those that do, they are typically enforced by the state's attorney general. Most have civil penalties but some also enforce criminal penalties.



# Road to Recovery: Federal, State, & Local Matters

- Sources of assistance
  - FEMA
    - Register immediately
    - Temp. housing, lodging expense reimbursement, repair grants, replacement of home when not repairable
  - SBA
    - Low-interest loans to homeowners
  - State and local programs
- Accessing assistance:
  - Information
  - Eligibility
  - Applications
  - Appeals

# Road to Recovery: Insurance/Repair Matters

- Damage covered?
  - Voluntary vs. Lender/Force-Placed
  - Find Policy/Determine Coverage
  - Home Inventory
- File Claim
- Claim Adjuster: public adjusters (often unregulated, overpriced)
- Indemnification Determination

# Indemnification Determination

- How much? (Full, Partial, Denial)
- Getting paid: Lender or servicer as payee
- Upfront distribution?
- Does it cover all of the damage?
- Gap funding issue?
- Distribution Issues (next slide)

# Insurance Distribution Issues

- Considerations:
  - Who signs first?
  - Needing a contractor/contract
    - Storm chaser problems
    - Affordability problems
  - Personal property proceeds
  - Are repairs feasible?
  - Application to loan balance or repair?
  - Gap funding via federal/state/local source?
  - Process and timeline as relate to repairs?
  - Scheduling insurance and mortgage inspections
- More: [NCLER Tip Sheet—Quick Tips to Help Older Homeowners Access Insurance Benefits after a Disaster](#)

# Mortgage Issues

# Mortgage Matters: A “To-Do” List

- Notify servicer of hardship and provide good contact information
- Identify loan owner (affects options)
- Was the loan current or delinquent or in default prior to the disaster?
- Is there home equity?
- Can the homeowner maintain current payments, make smaller payments, or neither?

# Insurance Disbursement Issues

- The general rule (Fannie Mae standard security instrument): Insurance proceeds applied to 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.
- Courts have construed the terms restoration and repair narrowly at times.

# Insurance Disbursement (cont.)

- 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.
- Delays in distributions of funds: breach of contract or breach of good faith and fair dealing.
- Courts have held that once the borrower defaults, the lender is under no further obligation to disburse insurance proceeds.



# Disaster Options: First Issues

- Which loan channel?
- Foreclosure Moratorium
- Eviction Suspension
- Credit Reporting Suspension
- Late Charge Suspension
- Forbearance
- Loss Mitigation including Loan Modification

# Who Are Servicers?

- Servicers not the same as investors, holders, or lenders
  - Investors hire/contract with servicers to interact with borrowers (accept payments, etc.)
  - Servicer may profit more by not providing loss mitigation.
- Common servicer violations:
  - Failure to process application in a timely way
  - Failure to convert
  - Requiring resubmission of income information
  - Asking for an upfront down payment
  - Telling homeowners they have to be in default
  - Using incorrect income information in processing NPV
  - Inserting waiver into the documents

# Investor Restrictions

- Identifying the investor is critical:
  - GSE?
  - Federal agency like the FHA, VA, USDA?
  - None of the above? (typically a mortgage pool)
- Mortgage Pools
  - Investors in mortgage pools have little say in which loans are modified and what guidelines will be used.
  - Servicers instead rely on PSAs

# Credit Reporting Suspension

- Freddie Mac
  - No negative reporting if in disaster forbearance, repayment or TPP.
- Fannie Mae
  - Single-Family Guide, April 11, 2018: temporarily suspend credit reporting of delinquencies if aware due to hardship from disaster. BUT June 13, 2018 version: must suspend reporting if during a disaster-related active forbearance, repayment plan, or Trial Period Plan if borrower making payments.
- FHA
  - Must suspend reporting of delinquencies to CRAs where borrower granted disaster-related mortgage payment relief AND is “otherwise performing as agreed” unless reporting required for loan modification.
- VA
  - Encourages suspension of credit reporting on affected loans
- USDA
  - No delinquency reporting where borrower in disaster forbearance.

# Late Charge Suspension

- Freddie Mac
  - No late charges if on forbearance or paying as agreed on repayment or TPP.
- Fannie Mae:
  - Before 12/1/18: Waiver late fees if borrower incurred expenses or lost income due to disaster or needs time to receive ins. Payment.
  - 12/1/18: No late charges during forbearance unless default.
- FHA:
  - No late charges if on forbearance or paying as agreed on loss mitigation plan.
- VA:
  - No mandate; encourages waivers on affected loans.
- USDA:
  - No late fees where borrower in forbearance or paying on agreed on repayment.

# Forbearance

- Freddie Mac
  - Pre 12/1/18: 12 month forbearance (longer on case by case basis) if right party contact. If no contact, short term forbearance.
- Fannie Mae
  - Effective 12/1/18 for both GSEs: Single forbearance plan for all short-term hardships. Without application package may grant 6 months, and extend up to 12 months.
- FHA
  - Consider forbearance before permanent loss mitigation solutions.
- VA
  - “Encourages” forbearance and permits modifications.
- USDA
  - Forbearance “encouraged.” Direct loans—payment assistance where income reduced by more than 10%.

# The GSE's Loss Mit Hierarchy

- The Flex Mod fits into a “hierarchy” of GSE loss mitigation options:
  - Repayment and forbearance plans
  - **Modifications** (Flex Mod now the only one)
  - Disposition options: short sale, deed in lieu
- Flex Mod:
  - Applicants who have temporary hardships or unemployment as hardship can be offered repayment/forbearance plans and not a Flex Mod
  - Two methods to get one: Borrower submits an application, or Servicer finds borrower eligible based on servicer's unilateral proactive review of loan file

# FHA Disaster Loss Mitigation

- General Rules:
  - Forward mortgages: **90-day foreclosure moratorium** following the disaster.
  - Reverse mortgages (HECMs) that become due and payable for reasons other than the death of the last surviving borrower and eligible non-borrowing spouse are subject to a **90-day extension of HECM foreclosure timelines.**
  - In PDMDAs only, **automatic 90-day extension from date of the foreclosure moratorium expiration** to commence or recommence foreclosure action or evaluate the borrower under HUD's loss mitigation program.



# FHA (Forward) Disaster Options

- Disaster Loan Modification (capitalize and extend to 360 months—1 per disaster)
- Disaster Standalone Partial Claim
  - Distinct from standard partial claim. 0% interest, second lien mortgage loan from HUD to bring your loan current as long as you were 60 days or less behind at the time of the storm. No target payment or change in amount. No target payment or full financial assessment.
- Streamlined income documentation available for both options.
- A Trial Payment Plan as an alternative to providing income documentation for both options.

# VA and USDA Loss Mitigation

- VA:
  - Until Nov. 2017: Modifications without complete applications—TPP required.
  - VA as of 11/27/17: Waives TPP.
- USDA:
  - If current at disaster, rate and term mod without full evaluation. Special relief measures in order: Term extension; Capitalization and Extension; Mortgage recovery advance.

# Reverse Mortgages

- “At Risk” F/C Extension (ML 5-11)
  - Youngest living mortgagor is at least 80 years old, and
  - Critical circumstances such as terminal illness or long-term physical disability of borrower or family member living in the home
  - New: available if loan is already in foreclosure/after first legal action
- Surviving Spouses: Mortgagee Letter 2019-15: (“MOE”)
  - Like prior Mortgagee Optional Election, gives servicers the option to assign the loan to HUD and allow eligible spouse to remain in the home
- For more information on reverse mortgage options:
  - [NCLER/NCLC Training—Assisting Older Homeowners and Surviving Spouses Facing Foreclosure of Reverse Mortgages](#)

# HECM Occupancy Post-Disaster

- Rule is clear, re: forward mortgages: HUD will relax the occupancy requirement for borrowers displaced by a disaster so long as the borrower intends to return to the home. A borrower who temporarily moves out of the home cannot be denied a loss mitigation option simply based on failure to occupy the home.
  - Additionally, HECM borrowers can designate an alternative contact person, such as a friend or family member, whom the servicer can contact if unable to reach the borrower.

# Housing Resources

- NCLC Library: [Home Foreclosures](#)
- NCLC [Obtaining Mortgage Relief for Victims of Disasters- A Practice Guide for Advocates](#)
- CFPB Servicing Rules
  - 12 C.F.R. §1024.30 to §1024.41; 12 C.F.R. § 1026
- Past NCLER Trainings:
  - [Helping Older Homeowners Recover from Natural Disasters](#)
  - [Assisting Older Homeowners and Surviving Spouses Facing Foreclosure of Reverse Mortgages](#)
  - [Legal Basics: Foreclosure Prevention](#)

# Getting Help

- Locate a civil legal aid attorney:
  - [Eldercare Locator](#): OAA-funded legal assistance
  - [Legal Services Corporation](#)
- [ABA Free Legal Answers](#)
  - Volunteer lawyers provide information and basic advice without any expectation of long-term representation.
  - After a disaster:
    - Increased income/asset caps for impacted residents
    - Allow for out-of-state volunteer attorney registrations to offer pro bono legal advice, per state supreme court orders
    - Adds hurricane related question categories for clients and alerts for volunteer attorneys.
- State [Law Help Websites](#)
- [Immigration Law Help](#)

# Disaster Legal Hotline

- The Disaster Legal Hotline becomes live after a Presidentially declared disaster.
  - FEMA disaster survivors can get immediate temporary legal assistance at no charge.
  - To qualify for Disaster Legal Services, the call must be a low income survivor of a presidentially declared disaster.
- Other hotlines:
  - [ABA List](#)
  - Senior Legal Hotlines

# Disaster Legal Aid Resource Center

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## National Disaster Legal Aid RESOURCE CENTER

**Do You Need Legal Help?**

**Are You a Legal Aid Professional?**

**Are You an Attorney Who Can Help?**

**ACTIVE DISASTER QUICK LINKS**

**TERREMOTOS EN PUERTO RICO 2020**

- Terremotos en Puerto Rico: 1-800-981-5342
- Terremotos en Puerto Rico [more info](#)

**PUERTO RICO EARTHQUAKES 2020**

- Puerto Rico Earthquakes: 1-800-981-5342
- Puerto Rico Earthquakes [more info](#)

**ARCHIVE**

**OTHER ONLINE RESOURCES**

- [ABA Disaster Recovery Resource Center](#)
- [FEMA: DisasterAssistance.gov](#)
- [Red Cross: Map of open shelters & Getting Assistance](#)
- [Google Crisis Man](#)

**Lone Star Legal Aid and Pro Bono Net Launch the National Disaster Legal Aid Advocacy Center**

In 2018, Pro Bono Net and Lone Star Legal Aid developed this practice area for DisasterLegalAid.org to help address

**Disaster Legal Services News**


[Attorneys offer assistance to tornado victims, Mar 9](#)

[Law students to spend spring break giving back through free legal services, Mar 6](#)



# FEMA Appeal Tool

< Back | Next > | MY PROGRESS: Welcome to the FEMA Appeal Template. ...



Welcome to the FEMA Appeal Template. It will help you appeal from a denial or payment of less than the amount you claimed. It will prepare an appeal letter and a request for your FEMA file.

**This template is for use by applicants in a FEMA disaster area.**

NOTE: FEMA assistance is a program of last resort to meet basic needs of you and members of your household brought on by the disaster. It is not a program to make you whole or to improve conditions that existed before the disaster.

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2 DECISION

1 APPLICATION

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# Case Consultations

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).