

# **VERMONT BAR ASSOCIATION VOLUNTEER LAWYER DISASTER LEGAL ASSISTANCE SERVICES MANUAL**

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## **DISCLAIMER**

**THE INFORMATION CONTAINED IN THIS DISASTER LEGAL ASSISTANCE SERVICES MANUAL HAS BEEN GATHERED FROM A NUMBER OF SOURCES AND, WHILE IT IS BELIEVED TO BE GENERALLY ACCURATE, NEITHER THE VERMONT BAR ASSOCIATION NOR ANY VOLUNTEER ATTORNEY USING THIS MANUAL GIVES ANY GUARANTEE OR ASSURANCE OF THE ACCURACY OR COMPLETENESS OF ANY PARTICULAR INFORMATION CONTAINED IN THIS MANUAL. THE INFORMATION CONTAINED IN THIS MANUAL IS FOR GENERAL GUIDANCE AND REFERENCE PURPOSES ONLY AND IS NOT INTENDED AS, NOR CAN IT BE RELIED UPON AS, LEGAL ADVICE.**

# MESSAGE TO VOLUNTEERS

Dear Fellow VBA Volunteer:

Disasters usually are unexpected and the damage begins to occur instantaneously. The time to prepare an effective volunteer *pro bono* legal assistance program is before any disaster occurs. This manual provides much of the information necessary to enable a volunteer legal program to assist our friends and neighbors in the aftermath of a significant disaster. We cannot anticipate every type of disabling event, or where in our state it may occur, but this manual can be periodically updated and supplemented with information specific to a disaster.

In the wake of the unprecedented damage caused by Tropical Storm Irene on August 28 and 29, 2011, the Rutland County Bar Association, in cooperation with the Vermont Bar Association, Vermont Legal Aid, Legal Services Law Line and the Vermont Volunteer Lawyer Project, formed a disaster assistance committee which produced the first version of this manual. In the months following Tropical Storm Irene, the Vermont Bar Association has taken on the charge of expanding this manual for statewide use in any man-made or natural disaster which may befall any part of our state. The Vermont Bar Association is very grateful to the Allegheny County (Pennsylvania) Bar Association for making available to us their excellent publication *Disaster Legal Assistance Manual for Volunteer Attorneys* to use as a baseline for our manual.

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

Volunteers in the VBA Disaster Legal Assistance Project will be asked to make themselves available to Vermont victims of future disasters to provide information, guidance and assistance in identifying available resources to help them deal with damage or loss they may suffer. Volunteers in the Disaster Legal Assistance Project will meet with those seeking assistance to “triage” their disaster related issues and direct them to resources that are available. This initial assistance will likely be provided in a legal clinic setting, and will not obligate the volunteer attorney to provide any post-clinic follow-up or assistance. Attorneys who wish to provide more extensive representation should enroll in the Disaster Assistance panel of the Vermont Volunteer Lawyer Project at [www.lawlinevt.org](http://www.lawlinevt.org)

To the extent that persons seeking assistance through the Disaster Legal Assistance Project require legal advice beyond the legal clinic session, VBA volunteers should refer them to the Disaster Legal Assistance Project hotline at 1-800-889-2047. Calls to the hotline are screened by Vermont Legal Aid support staff. Upon calling the hotline, callers should immediately identify themselves as victims of the disaster so their call is routed appropriately. Staff will then triage callers to an attorney at Vermont Legal Aid, at Legal Services Law Line for over the phone advice, or to the Vermont Volunteer Lawyer Project (“VVLP”). Victims who qualify for pro bono assistance will be referred by VVLP to pro bono legal services. Those who do not qualify for pro bono legal

services will be referred to the Vermont Bar Association Lawyer Referral Service. If a volunteer Disaster Legal Assistance Project attorney is registered with the Lawyer Referral Service, and the persons seeking assistance requests that Lawyer Referral Service refer the case to the volunteer lawyer, the volunteer lawyer may undertake the representation.

Included in this manual is an overview of disaster-related issues and resources, a description of the process of providing legal assistance to disaster victims, information you may need to help answer frequently asked questions on issues such as housing, insurance, unemployment compensation and other relevant issues, as well as an appendix including: Case Intake and Closure Forms, copies of relevant articles and statutes, important telephone numbers, and legal services contact numbers.

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

### ***Sources of Legal Assistance***

The Disaster Legal Assistance Project hotline, 800-889-2047, is the state-wide intake number for Vermont Legal Aid, Legal Services Law Line of Vermont, Vermont Volunteer Lawyer Project, and several other legal assistance projects in the state. The hotline can route all individuals and households with legal issues to the appropriate source of legal assistance. If you have any questions about the Disaster Legal Assistance Project hotline, please contact Angele Court at the:

Vermont Volunteer Lawyers Project  
274 N. Winooski Ave  
Burlington, VT 05401  
1-800-639-8857  
acourt@lawlinevt.org  
www.lawlinevt.org/vvlp

Other resources include:

- The Vermont Bar Association Lawyer Referral Service at 1-800-639-7036 or via email at [www.vtbar.org](http://www.vtbar.org);
- Mary C. Ashcroft, Esq. Pro Bono Coordinator at 802-775-5189 or via her email at [mashcroft@vtbar.org](mailto:mashcroft@vtbar.org)

### ***Commitment***

A common question asked by volunteers relates to the time commitment involved. First, by volunteering to provide assistance for victims, you are agreeing to provide your

services on a pro bono basis. In many cases, the time required may be minimal, simply answering a few questions at a single conference or in a single day. In other cases, additional time may be required to evaluate the issue and identify possible resources to the disaster victim. Your service is not meant to extend beyond the “triage” phase. Rather, the pro bono program we have set up is designed to help provide emergency screening and assistance to victims and help identify any ongoing or more complex disaster-related legal assistance needs that may require further assistance or referral to another organization. If you find a victim who needs more extended legal representation you are advised to refer them to the appropriate legal services program.

### ***Limitations to Representation***

There are several important limitations to your representation:

- 1) Disaster-related only.** This program is to help persons damaged by a declared disaster, thus problems unrelated to the disaster are not covered;
- 2) Free consultation.** The initial consultations with victims of disasters through the Disaster Legal Assistance Project does not cover fee-generating cases. If the victim has a case that is potentially fee-generating, he or she should be referred either to his or her own attorney or to the VBA’s Lawyer Referral Service.
- 3) Conflicts of Interest.** If you know you have a conflict of interest with a client referred to you, please notify the referring organization that you cannot take the case. However, in a legal clinic situation anticipated under this project, you are not required to review your limited representation for potential conflicts. VRPC 6.5.
- 4) Within the scope of the Disaster Legal Assistance Project.** If, after speaking to a victim, you believe that the case is beyond your expertise, you should refer the disaster victim to VVLP;
- 5) Anti-solicitation rule.** Lawyers are strongly cautioned against engaging in solicitation of disaster victims. Solicitation, whether by in-person contact, telephone, or real-time electronic communications, and whether by the lawyer personally or someone on his or her behalf, is prohibited by Rule 7.3 of the Vermont Rules of Professional Conduct unless the lawyer has a familial or prior professional relationship with the prospective client. Although direct mail solicitations are permitted, they too must comply with Rule 7.3(b) of the Vermont Rules of Conduct. Anyone with information that a lawyer is engaging in solicitation should report the lawyer to the Disciplinary Board of the Supreme Court of Vermont. Please note that volunteer lawyers who are offering their services to disaster victims at no charge do not violate the anti-solicitation rule.

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

- 1) Read through the attached materials** which discuss the role of the volunteer lawyer. This is especially important because it lists common questions that arise in a disaster and

details the steps to be followed in assessing the disaster victim's needs, legal assistance requirements, and in documenting your assistance and follow-up for the client (Disaster Legal Assistance Interview Checklist and Intake Forms).

2) **Intake procedures.** In the event of a disaster, intake forms for disaster victim interviews will likely be provided by the VBA, please refer to the website, or create your own if the website is not accessible. The intake form should be completed at the beginning of each interview and signed by both the person being interviewed and the interviewing attorney. The completed intake forms will be collected at the end of each Clinic and maintained by the VBA.

3) **Handling the victim's legal problems.** You should document the disaster victim's responses on the intake forms, all of your contacts and actions taken on behalf of the client, and the outcome of your efforts. Please keep track of the amount of time spent on each case.

4) **Volunteer!** You can sign up in advance with the Vermont Volunteer Lawyers Project to provide legal services in the event of a disaster at [www.lawlinevt.org/vvlp](http://www.lawlinevt.org/vvlp) . After a disaster has occurred, check the website of the Vermont Bar Association at [www.vtbar.org](http://www.vtbar.org) or at Vermont Legal Aid at [www.vtlawhelp.org](http://www.vtlawhelp.org) for calls for volunteer attorneys, and respond!

5) **Review Resources.** This manual is only the beginning of resources available to you and your advice clients in a disaster. Check the resource guide chart in the back of the manual for websites of state and federal agencies and non-profit organizations. Visit the website of Vermont Legal Aid at [www.vtlawhelp.org](http://www.vtlawhelp.org) where updates will be posted. Other useful information may be found at the Vermont Bar Association at [www.vtbar.org](http://www.vtbar.org)., and on the Vermont Judiciary webpage at [www.vermontjudiciary.org](http://www.vermontjudiciary.org). Also, reach out to your colleagues via list-serves, phone calls and e-mail.

Many victims have suffered and will continue to suffer great personal trauma, so every effort should be made to be sensitive to their feelings and behavior, and every effort should be made to be responsive to their needs. Our thanks go out to each and every person who volunteers to assist a disaster victim. You can provide the legal help so desperately needed in a time of crisis.

Sincerely,

Mary Ashcroft, Esq.  
Amber Barber, Esq.  
Margaret Frye, Esq.  
Jessica Radbord, Esq.

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# I. TYPICAL LEGAL ISSUES AFTER A DISASTER

Based on our experience following Tropical Storm Irene, we noted that volunteer attorneys are frequently asked to provide preliminary advice and guidance regarding the following matters:

1. Filing for assistance from FEMA.
2. Registering for assistance through Vermont 2-1-1.
3. Submitting insurance claims (flood, homeowners, car, renters', medical, life, etc.) and appealing insurance pay outs.
4. Landlord-tenant issues, including lease termination, repairs, personal property damage, abandoned property and rubbish, debris removal, etc.
5. Drafting, reviewing, or challenging home repair contracts and mobile home repair and demolition contracts.
6. Consumer protection issues.
7. Mortgage-related problems, including foreclosure avoidance, forbearance, loan modifications, and principal reduction.
8. General real estate and title issues, *e.g.*, boundary lines.
9. Takings, *e.g.*, emergency relocation of a road onto a homeowner's property.
10. Regulatory and permitting issues relating to damaged, destroyed or contaminated property.
11. Access to public infrastructure (roads, sewer, water, power, telephone) services.
12. Hazardous waste spills/releases; contaminated property.
13. Replacement of important legal documents destroyed in the natural disaster, such as wills, alien registration cards, and the like.
14. Help with understanding, applying for and navigating public benefits programs (*e.g.*, food stamps (3SquaresVT), welfare (ReachUp), social security disability, Medicaid, etc.).

15. Powers of attorney.
16. Estate administration (insolvent estates).
17. Tax questions, including IRS casualty loss tax deductions and property tax abatements.
18. Preparation of guardianships and conservatorships
19. Referring individuals to local or state agencies which might be of further assistance (*e.g.*: the Consumer Assistance Program of the Attorney General's Office).
20. Assisting individuals with disabilities to obtain accessible housing, durable medical equipment (wheelchairs), prescriptions, medical care including mental health services, and accessible transportation.
21. Helping children achieve stability in their educational program.
22. Employments issues, including applying for Disaster Unemployment Assistance, arranging family leave, etc.

This manual is only a general introduction to some of the legal issues that volunteer attorneys are likely to be asked following a disaster. Obviously, the manual is intended only as a starting point for any legal research that volunteer attorneys may need to conduct to effectively assist their clients. Clients may present legal problems that are not addressed in this manual at all, and for that reason, the VBA welcomes your input and additions to the manual should an area of law not discussed here needs to be added.

This manual is a "living" document that is likely to be subject to substantial edits in the future. The most up-to-date version of this manual is available in electronic form on the VVLP website at <http://lawlinevt.org/vvlp> and the VBA website.

## **II. APPLYING FOR ASSISTANCE FROM FEMA: THE INDIVIDUALS AND HOUSEHOLDS PROGRAM**

FEMA provides numerous possible forms of assistance, including public assistance to state and local governments, hazard mitigation assistance, and individual assistance in the form of case management, programs, and financial assistance. The State of Vermont and your client's local community is responsible for applying for Public Assistance from FEMA. Non-cash individual assistance (referred to as "Direct Assistance") may be available in the form of counseling, help finding alternative housing, referrals to non-profit agencies, and in rare instances, the provision of FEMA trailers where alternative housing is unavailable. Vermont 2-1-1 will be able to direct clients to the appropriate forum to seek Direct Assistance in the client's county or locality. This section deals exclusively with the Individual and Households Program, FEMA's cash assistance program.

### **The First Step: Presidential Disaster Declaration**

When the President of the United States declares a "major disaster" or "emergency" anywhere in the United States or its territories, federal assistance is made available to supplement the efforts and resources of state and local governments and voluntary relief organizations pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended 42 U.S.C. § 5121-5207. A declaration is only made after the Governor requests federal assistance. 42 U.S.C. § 5170. Under Titles IV and V, the Act authorizes the President to determine whether certain types of assistance will be provided and the conditions under which the aid is distributed.

A "major disaster" is defined as "any natural catastrophe," including storms, earth movements, and high water, and "regardless of cause, any fire, flood or explosion." 42 U.S.C. 5122(2). The definition of "emergency" is not as strict, authorizing the President to determine "any occasion or instance" when federal aid is needed by state and local governments to save lives and property or to address the threat of a catastrophe. The statute also authorizes the President to provide fire suppression assistance to prevent a forest or grassland fire from becoming a major disaster.

The important point for our clients is that federal assistance is available only if a presidential disaster or emergency is declared. And further, the types of assistance available may be limited under the terms of the declaration. Often, FEMA consults with State and local officials to determine the types of assistance that are needed. Thus, your client may benefit from appeals to her local and State representatives for specific types of assistance that are not yet being offered. After Tropical Storm Irene, a major question for FEMA and state and local representatives was whether or not housing assistance in the form of FEMA trailers was needed in Vermont. The challenge to officials was to pinpoint the level of need for that type of assistance. Because there were no reports of

individuals or households who were unable to secure alternative housing, FEMA did not provide temporary housing units in Vermont.

## **Overview of the Individuals and Households Program (IHP)**

The Individuals and Households Program (IHP) provides money and services to people in the disaster area when losses are not covered by insurance and property has been damaged or destroyed. The program provides financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster or emergency, have uninsured or under-insured necessary expenses and serious needs and are unable to meet their expenses or needs through other means. IHP is a program of last resort to meet basic needs – it is not designed to make a client “whole,” i.e., to return them to their pre-disaster condition. A client may have lost \$10,000 worth of shoes and clothing. However, if she still has seven day’s worth of basic outfits, she will not be compensated for her loss.

Program assistance is available from the date of the declaration of the disaster until no more than 18 months later, unless FEMA determines that, due to extraordinary circumstances, the assistance period should be extended. However, to qualify for any assistance at all, applicants must timely register with FEMA (for more information on timely registrations, see below).

IHP funding is not counted as income and is exempt from garnishment. See 44 CFR 206.110(f). Thus, it is not counted as income or a resource in the determination of eligibility for welfare, income assistance, or income-tested benefit programs funded by the federal government. It is also exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release, or waiver. However, these exemptions cannot be reassigned or transferred. FEMA funds are not included in the bankruptcy estate. After Irene, for instance, a disabled owner of a mobile home was able to obtain enough FEMA funding to purchase a new home while maintaining her food stamp allowance and her SSI monthly benefit amount because the FEMA grant was considered exempt.

As noted earlier, the Stafford Act can be found at 42 U.S.C. § 5121-5207. The Act has recently been amended by the Post-Katrina Emergency Management Reform Act of 2006, P.L. 109-295, Title VI; 120 Stat. 1355 (2006) (PK Act), and the Pets Evacuation and Transportation Standards Act of 2006, P.L. 109-308, 120 Stat. 1725 (2006). The PK Act expanded the authority of FEMA to provide assistance, including individual case management, assistance for service animals, recognizing the need for reasonable accommodations to program rules for persons with disabilities, and, arguably, greater authority for regional management to authorize granting assistance to multiple households from one address. The statute also eliminated the cap on home repairs and replacement assistance, but did not eliminate the overall cap on assistance (at the time of this writing, the cap per household is \$30,200). Lastly, the amendment states that FEMA “may” provide for utility costs and security deposits as part of rental assistance, i.e., the agency may opt not to include utilities, or it may elect to do so. The IHP regulations can be found at 44 CFR Part 206, Subpart D. At the time of this writing, regulations

implementing the PK Act have not been issued. FEMA administrative guidance and orders are also not currently available online.

Because of the lack of transparency in FEMA policies, procedures, and internal administrative guidelines, applicants often need significant assistance to obtain the appropriate level of funding. The basis for a FEMA decision is often completely unclear and FEMA does not respond to requests for written explanations of their decisions. As the Court of Appeals for the Fifth Circuit noted:

FEMA could measurably improve the navigability of its processes by providing applicants with more understandable explanations of its ineligibility determinations. Until a disappointed applicant is informed of the reasons that FEMA believes him to be ineligible for assistance, including the factual basis underlying that decision, he simply has no way to “test the veracity of the agency’s findings against him.”

*Ridgely v. FEMA*, 512 F.3d 727, 741 (5th Cir. 2008) (quoting *Billington v. Underwood*, 613 F.2d 91, 94 (5th Cir. 1980)).

For instance, review of the Stafford Act, its implementing regulations, the PK Act, and FEMA’s website does not indicate that mold remediation is not an expense eligible for funding. Common understandings would, of course, include mold remediation as part of home repair after a flood. But customer service representatives and FEMA officials uniformly state that mold remediation is not an eligible home repair expense. When questioned, they are unable to point to any authority for their statement. Similarly, although it is likely that FEMA uses standard values for certain types of repair, the agency opts to not publish those standards. Further, many FEMA representatives appear to be unfamiliar with many of the changes generated by the PK Act, providing applicants with incorrect information. For this reason, rather than rely on the information provided by FEMA representatives, advocates should have an understanding of what services and/or funding their clients may be eligible to receive, and go to the statutes and regulations as necessary.

## **The Registration and Application Process**

Anyone within a county or locality within the disaster declaration area should apply for FEMA assistance immediately. The FEMA registration period is 60 days following the date the President declares an incident a major disaster or an emergency. (FEMA may, at its discretion, extend the application deadline if the State requests more time to collect registrations). It is prudent for everyone to register, even if they are not immediately aware of disaster-related losses. In the event that damages become apparent months later, the applicant who has timely registered with FEMA will still be able to support proof of loss to the agency in an appeal for funding. Conversely, an individual or household that never registered will be unable to do so.

There are three ways to register for FEMA assistance:

1. Call the toll-free registration number at 1-800-621-FEMA (3362).
2. Register and apply online at [www.disasterassistance.gov](http://www.disasterassistance.gov).
3. If the applicant cannot apply by telephone or online, she may apply in person at a Disaster Recovery Center. Vermont 2-1-1 has the most up-to-date information about the locations of Disaster Recovery Centers and what services will be available there. Online, Center locations may be found at the following website: <http://asd.fema.gov/inter/locator/home.htm>

In addition to having a pen and paper handy, the applicant should have the following information ready:

- Zip code at the time of the disaster
- Social Security Number
- Household members
- Description of losses caused by the disaster, including, but not limited to:
  - damage to real property
  - damage to motor vehicles
  - personal property loss
  - personal injury
  - medical expenses, including lost prescriptions, durable medical equipment, and so forth
  - costs related to temporary housing
- Insurance information, including homeowner's, flood, renter's, vehicle, and medical
- Directions to damaged property
- Current contact information, including mailing address, telephone number, and e-mail address<sup>1</sup>
- Bank account information, if the applicant wishes to have benefits directly deposited into his bank account

When providing assistance to a FEMA applicant, it is helpful to create a list of all damaged property prior to contacting FEMA. Examples of questions to ask your client include:

- Did you have your septic system inspected? Have you heard any gurgling sounds that may indicate that the system has failed?
- Have you tested your furnace to be sure it is functioning?
- Have you already submitted a claim to insurance, even if you think it will be denied?

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<sup>1</sup> Applicants are given the opportunity to receive notices via e-mail rather than by mail. If they opt to receive notice electronically, they should ensure that messages are not filtered into their spam folder.



Only one application per household is accepted, so all household members should (ideally) agree on who shall be the application on everyone's behalf. If a second person from the same household applies for and receives assistance, she may have her benefits recouped and may be subject to civil and/or criminal penalty. Note, however, that two households may reside at the same address, or for other reasons, FEMA may consider two applications from the same address. For two households to be recognized, the applicants generally must be unrelated and must show that they have been geographically separated since the disaster. Special circumstances, like domestic violence or divorce, may also form the basis for FEMA to consider applications from two people who resided at the same address prior to the disaster. It is extremely likely that the second applicant from the same pre-disaster address as another applicant will find her application denied, and special circumstances or separate household information will have to be provided in a subsequent appeal.

The applicant will be given a FEMA application number and the disaster declaration number, and if she applied by telephone, the badge number of the customer service representative. The applicant should print a copy of her application, or, if she filed by telephone, request a copy of the application. It is a good idea for the applicant to keep a log of all calls made to FEMA, including the badge number of the customer service representative and a brief description of the purpose and outcome of the call.

If the applicant's information changes at any time, she should contact the FEMA Helpline at 800-621-FEMA (3362) immediately.

After completing the FEMA application by telephone or online, the applicant should send FEMA information the agency will eventually request and send the agency a release of authorization for you, if applicable. For a sample Authorization to Release Information form for FEMA, see Appendix. Documentation that should be sent to FEMA includes the following:

- Documentation indicating that the applicant does not have insurance coverage for the damages incurred OR documentation indicating that his/her insurance will not cover the claim OR documentation of the final loss paid.
- Receipts for medical expenses, dental expenses, storage costs, etc.
- If the applicant had to secure alternative housing, a copy of the lease (a written lease is required) and documentation of rent paid.

All documentation and correspondence sent to FEMA should include the applicant's full name, FEMA registration number, the disaster number, date and place of birth, damaged dwelling address, and current address on every page. Documentation can be sent

by fax:

(800) 827-8112  
Attn: FEMA

or by mail:

FEMA  
National Processing Service Center  
P.O. Box 10055  
Hyattsville, MD 20782-7055

Again, be sure to include the applicant's information on each sheet of paper.

## **FEMA Response: Inspection & Notification of Eligibility**

FEMA will usually respond to the applicant in no more than 10 days from the date she completes her application. Possible responses are: (1) a call from an inspector; (2) a denial notice; (3) a FEMA grant notice; or (4) a request for additional information. Each of these possible responses is addressed below.

### ***The FEMA Inspection***

If an applicant is uninsured, underinsured, or lacks the appropriate insurance coverage, the applicant is likely to be required to have an inspection performed by a FEMA representative.<sup>2</sup> Both renters and homeowners are subject to inspections. An inspector will call the applicant to schedule an appointment to visit the damaged property no later than 10 days after registration. The inspector will assess disaster-related damage for real and personal property, including whether or not a residence is habitable. The inspector will also attempt to determine the status of the applicant, as owner, lessor, or fraudulent applicant. Inspectors file a report with FEMA regarding the amount of damage and types of damage found; the inspector does not determine the applicant's eligibility for assistance.

Either the applicant or a person at least 18 years of age who lived in the applicant's household at the time of the disaster must be present. The applicant must provide proof of ownership (for homeowners) or of occupancy (for tenants). If the applicant does not have a written lease, occupancy can be proven with utility bills. The applicant must provide the inspector with picture identification and sign a form authorizing FEMA to verify that the information he has provided is correct. The applicant can also use the inspection as an opportunity to provide copies of receipts for repairs already made and pictures taken both before and after the disaster to demonstrate the level of damage.

If the applicant is not satisfied with the inspector's performance, she has a right to request a second inspection with a different inspector. The applicant should call FEMA

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<sup>2</sup> The FEMA inspector is not a FEMA employee. They are under contract with FEMA. The inspector should provide the applicant with picture identification. Clients should document the name of the inspector, the inspector's I.D. number, contact information, the date of the inspection, and what the inspector did.

immediately to request the second inspection rather than waiting for notice of the inspection results.

### ***Denial Notice***

If an applicant is not eligible for help, she will be notified by FEMA by mail or e-mail. The letter will give the reason for the denial, for instance, that she is the second person applying based on damage to a particular pre-disaster address. The notices often use vague or unclear terms and never provide details of the basis for the denial. By calling the FEMA helpline at 800-821-FEMA, you may be able to gather additional information as to the basis for the denial. Further, getting a copy of the applicant's entire FEMA file may provide more information on the denial. In any case, there is no harm in appealing the denial, and anyone denied benefits would be wise to submit a timely appeal.

The denial notice will inform the applicant of her appeal rights. The applicant may also be referred to the Small Business Administration (SBA) for help. If so, the notice will include an SBA application.

### ***Notice of FEMA Grant***

Within ten days of the inspector's visit (or of application, if no inspection was required), the applicant will receive a letter or e-mail from IHP to notify her of the agency's decision on the application. If the applicant is eligible for financial help, the letter will explain how much money will be issued and what it can be used for. It will be followed by a check or cash transfer. The funds cannot be used for any purpose other than those listed on the notice.

### ***Request for Additional Information***

FEMA often requires additional information in order to process an application. Applicants must timely provide all documentation requested, such as insurance denials or verification of address. If the applicant is unable to provide the documentation requested in the time allotted, contact the FEMA helpline immediately to discuss alternative forms of documentation that may be accepted or to explain the situation.

## **Program Eligibility Requirements**

To receive assistance from FEMA, certain basic requirements must be met. There are different eligibility factors depending upon the type of assistance requested, as noted in 44 CFR 206.113. The CFR provides minimal guidance, not itemizing any exceptions to the rules or providing details like the meaning of "significant delay" or "when housing is not available on the private market." As an advocate for your client, you can urge FEMA to use an interpretation of these terms that will best meet your client's needs.

### ***Eligibility for Housing Assistance***

To receive money or help for housing needs, including housing repair, housing replacement, or rental assistance, all of the following must be true:

1. The client filed for insurance benefits and the damage to his property is not covered by insurance.
2. The applicant or a member of her household is a United States citizen, a non-citizen national, or a qualified alien.
3. The home is in a presidential disaster area.
4. The applicant lives in the damaged property for the majority of the year, i.e., it is his primary residence.
5. The applicant's home is uninhabitable, inaccessible, made unavailable by a landlord who is meeting her own disaster housing need, not functional, or the home requires repairs because of damage directly caused by the disaster.

Several important notes should be made here when offering advice to clients. Even if a client knows her insurance will not cover her losses, she must submit a claim and provide the denial notice to FEMA. An applicant who does not satisfy condition #2 (immigration status) may be at risk of being reported to Immigration and Customs Enforcement (both ICE and FEMA are part of the Department of Homeland Security). If an applicant has not been in his home for the majority of the year, as required by condition #4, because of military service, hospitalization, or the like, but the property is his primary residence, he will be eligible for assistance (upon showing appropriate documentation). Under condition #5, the definition of "inaccessible" under the Post-Katrina Amendments includes "inaccessible because of a household member's disability." Lastly, under #5, FEMA may determine that damage was not directly caused by the disaster because of "deferred maintenance." Following Hurricane Ike, low-income FEMA applicants in Texas were often denied assistance because the agency determined that their houses were damaged only because they were in poor condition prior to the disaster. This is, of course, purely speculative on FEMA's part, since the agency had not sent inspectors to take a look at the homes prior to Ike's landfall. FEMA has allegedly changed its deferred maintenance policy, and in Vermont, applicants have been able to successfully contest FEMA denials attributed to "deferred maintenance." When your client's FEMA inspector comes to the property, chat is an invaluable way of imparting an important message to the inspector: the damage was directly caused by the disaster in that it would not have incurred such damage but for the disaster, and there was no other intervening cause that the damage can be attributed to.

### ***Eligibility for Other Needs Assistance***

To receive money for needs other than housing, all of the following must be true:

1. The losses occurred in a presidential disaster area.

2. The applicant filed for insurance benefits and the damage to personal property is not covered by insurance.
3. The applicant or a member of her household is a United States citizen, a non-citizen national, or a qualified alien.
4. The applicant has necessary expenses or serious needs because of the disaster.
5. The applicant accepted assistance from all other sources for which she is eligible, including insurance proceeds or SBA loans.

In other words, anyone applying for Other Needs Assistance (“ONA”) will be referred to the SBA for a loan, and only if that loan is denied will the household be eligible for additional FEMA assistance. The only exception to this rule is that some extremely low-income individuals and households will not be referred to the SBA. For instance, clients receiving welfare or SSI are unlikely to be referred to the SBA. If that client is sent an SBA application rather than being considered for ONA, she should contact FEMA to clarify her sources of income.

### ***Ineligibility Factors***

An applicant may not be eligible for assistance from IHP if:

1. The applicant has adequate rent-free housing she can use (e.g., a vacation home).
2. The damaged property is a secondary or vacation home.
3. Expenses occurred were all precautionary, e.g., the applicant stayed in a hotel on the night of a storm for fear of flooding, but the home was never actually flooded.
4. The applicant refused assistance from insurance, or in the case of ONA, the applicant refused assistance from the SBA.
5. The applicant’s only losses were business-related or farm-related (other than a farmhouse that was the applicant’s primary residence).
6. The applicant received FEMA assistance in an earlier flood-related disaster but failed to obtain flood insurance, or the damaged home is in a designated flood hazard area and the community declined to participate in the National Flood Insurance Program. (Such individuals may still qualify for rental assistance or repairs not covered by flood insurance.)

If the applicant is a landlord applying for IHP benefits based on damage to her own home, her rental properties are only considered adequate rent-free housing if they are not tenant-occupied.

### ***Duplication of Benefits and the Sequence of Delivery***

Pursuant to the requirements of Section 312 of the Stafford Act, 42 U.S.C. § 5155, FEMA will not provide assistance when any other source has already provided assistance for the same purpose or when such assistance has been made available but was rejected by the applicant. FEMA has established a sequence of delivery to help avoid

duplication of benefits. See 44 C.F.R. 206.191. The sequence of delivery for major forms of assistance is as follows:

1. Volunteer agencies' emergency assistance (e.g., American Red Cross emergency shelters) and insurance (including flood insurance).
2. Housing assistance pursuant to section 408 of the Stafford Act, i.e., FEMA grants for rental assistance, home repair, or home replacement.
3. Small Business Administration and Farmers Home Administration disaster loans;
4. ONA, pursuant to section 408 of the Stafford Act, to replace necessary personal items like basic clothing, furniture and appliances, transportation, medical, dental, and funeral expenses.
5. Volunteer agencies' "additional assistance" programs.
6. The "Cora Brown Fund," used for disaster victims who have exhausted all avenues of assistance, but who still have unmet needs. FEMA uses these funds under the authority of 42 U.S.C. § 5201(b) of the Stafford Act and 44 CFR 206.181.

However, insured applicants may be able to obtain assistance when payment of benefits are being significantly delayed through no fault of the applicant, benefits are exhausted, or benefits are insufficient to cover the housing or other needs. For example, a homeowner insured for property loss may not have coverage for alternative housing. In such a case, the homeowner may be eligible for rental assistance if her damaged property is uninhabitable while repairs are being made.

## **Types of Losses Covered by IHP**

IHP only covers repairs or replacement of real or personal property that was damaged as a direct result of the disaster and that is not covered by insurance. Repair or replacement will not improve the home beyond its pre-disaster condition, and is unlikely to bring it up to par with its pre-disaster condition, unless the improvements are required by the Vermont Fire & Building Safety Code or other applicable building codes.

Housing needs under IHP consist of housing repair, housing replacement, and rental assistance. Replacement is rare. In Vermont, replacement grants were awarded to mobile home owners whose houses were destroyed by Irene only after close to a year of struggling with FEMA. Housing repair grants are significantly more likely to be offered than housing replacement grants. IHP funds are limited to making the applicant's home safe and sanitary, not making the home the same as it was prior to the disaster. Funding may be issued to cover the following types of repairs:

- Structural repairs, e.g., foundation, walls, roof, floors.
- Windows and doors.
- Kitchen basics (cabinets).
- Septic or sewage system.
- Well or other water system.
- Utilities (electrical, plumbing, gas, etc.).

- Privately owned access roads, private bridges or culverts that are necessary to enter and exit the property.
- Blocking, leveling, and anchoring of a mobile home and reconnecting it to sewer, water, electrical and fuel lines.
- Debris removal.

Assistance to meet other needs is extremely limited (FEMA refers to this as “ONA”: Other Needs Assistance). Applicants are not offered FEMA funding to return or replace personal property to its pre-disaster condition, and keep in mind that most applicants, unless they are extremely low-income or have been denied for SBA funding, will not be eligible for ONA. The following are examples of what ONA funds may be used to pay for:

- Disaster-related medical, dental, funeral, or burial costs.
- Clothing if all or almost all clothing was lost.
- Household items (a very basic allowance for replacement furnishings and appliances).
- Tools required for work (like special protective clothing or equipment) or necessary educational materials for a student (books and supplies, maybe a computer).
- Heating fuel for the primary heat source only.
- Cleaning equipment specifically related to the disaster (dehumidifier, air purifier, Shopvac).
- One vehicle damaged by the disaster, unless it can be shown that two vehicles are needed in order to transport different members of the household to work.
- Moving and storage expenses related to the disaster.
- Other exceptional expenses that FEMA decides to approve.

As new expenses arise, so long as the applicant timely filed for FEMA assistance, she may continue to submit receipts and invoices to seek additional funding.

## **FEMA Appeals**

A person can appeal a denial of benefits, the amount of the benefit, or other adverse actions by FEMA. To do so, they must file a written appeal within 60 days after the notice of decision is received. Appeals must be submitted in writing. Anecdotally, it appears that applicants who submit appeals on their own behalf fare significantly better than those who appeal with the assistance of an attorney, except in certain limited circumstances discussed below. The applicant must sign the appeal letter and include the following statement:

By my signature, I certify and affirm, under penalty of perjury (28 U.S.C. § 1746) that all information I have provided in this appeal is true and correct to the best of my knowledge.

Appeals can be sent by fax to: FEMA – Appeals Officer, 800-827-8112. Alternatively, they can be mailed to:

FEMA – Appeals Officer  
National Processing Service Center  
P.O. Box 10055  
Hyattsville, MD 20782-8055

Benefits are denied for a number of reasons, with the most common being: the shared household rule; duplication of benefits; ineligibility based on program requirements; and insufficient documentation of losses. Each of these bases for denial are discussed below.

### ***The Shared Household Rule***

The shared household rule provides that only one application per household is permitted. The applicant need not be the “head of the household” – the first in time to apply is the only person considered for a grant. Household includes all persons living in the same residence at the time of the disaster, including people away on vacation or at school. It applies regardless of relationship, including live-in caregivers, live-in household help, and roommates.

Denials based on the shared household rule can be appealed under certain circumstances. Pursuant to 44 C.F.R. 206.117(b)(i)(A), the Regional Administrator or his designee can use their discretion to determine that more than one application per pre-disaster address should be permitted. Bases for appeal are where the applicant absconded with the funds, where a live-in employee is no longer so employed following the disaster, where individuals living at the same address evacuated to different locations, where household members separated due to domestic violence, divorce, or legal separation.

### ***Duplication of Benefits***

Duplication of benefits denials can be appealed on the basis that the non-FEMA benefits were never received or were insufficient, that other benefits received served a non-disaster related purpose, or were used to cover expenses not eligible for FEMA assistance, or by showing that the alternative benefit source is not available to the client.

Clients with insurance are likely to find that FEMA has automatically denied assistance for home repair based on duplication of benefits. However, the homeowner may find that their insurance carrier has provided them with insufficient funding to make repairs. If the homeowner has estimates for the repair work, such documentation should be submitted along with the notice of final loss paid to appeal for FEMA funding to cover the balance.

Localities or non-profits may provide disaster victims with funding for miscellaneous expenses that FEMA may consider to be funding for home repair or rental



assistance that it would otherwise provide. FEMA applicants will be best served by such donors if the donor provides the recipient with a letter indicating that the funding is for certain specific purposes. For instance, an Irene survivor receive a donation from a private foundation to compensate her for losses related to the destruction of the inventory of her small business located within her home. This donation was not a duplicate benefit because it covered losses not allowable under IHP.

Where an application is denied because the disaster victim has not applied to SBA (i.e., the applicant had the opportunity to access an alternative funding resource but opted not to do so, so duplication has been implied), if the applicant is low-income, you may be able to resolve the issue without a formal appeal. In such cases, a call to the FEMA Service Center at 800-621-FEMA to point out that the applicant's only income is Social Security, for example, may suffice.

### ***Ineligibility Based on Program Requirements***

Where program eligibility requirements are allegedly not met, appeals involve providing as much evidence and documentation as possible to show that the applicant satisfies eligibility requirements. After Irene, some tenants were surprised to find their FEMA applications denied because of the shared household rule. Their landlords had already applied for benefits, falsely claiming to be occupants in the property rented out to the tenant. To appeal such a denial, the tenant would provide a copy of her lease, cancelled rent checks, show utility bills in her name, and legal records (tax form, driver's license, etc.) listing her address.

### ***Insufficient Documentation of Losses or Disputes as to the Value of Losses***

The applicant should provide as much evidence and documentation as possible to show the costs the applicant has or will incur due to the disaster. The applicant will need to obtain a copy of her FEMA file to see how much funding FEMA has allotted for each type of repair needed. The applicant can contest FEMA's estimates by demonstrating that the estimates for repairs FEMA has used in its calculation are too low or by showing that FEMA has applied the wrong type of repair to the homeowner's problem. For instance, in one Irene case, a homeowner's septic system failed due to the flood. FEMA included an estimate for a leach field system, but the homeowner's property would only support a mound system. With a report from a licensed septic system designer, the applicant was able to obtain additional funding to repair the system. In most cases, however, the applicant will be required to produce at least two estimates from licensed contractors, electricians, plumbers, or other repair persons.

In a very limited number of cases, the applicant may appeal for home replacement value rather than home repair value. This is particularly appropriate in cases involving damage to a mobile home. Mobile homes are rendered structurally unsound with even slight shifts of their cement blocks. The cost of repairing the flooring, walls, electrical system, and insulation in a mobile home inundated with as little as 3 inches of water will usually not be financially reasonable given the trailer's pre-disaster value. To appeal for

replacement value, the homeowner should request a letter from the local ZA describing the level of damage based on the FEMA substantial damage estimator and indicating that the property is uninhabitable. This report can be sent to the Department of Public Safety and the Agency of Commerce and Community Development along with a request for a DPS inspection of the trailer. If DPS finds that the mobile home is condemnable, through ACCD, the homeowner will be able to obtain a condemnation letter from the Governor's Office. That letter will, in most cases, result in issuance of the remaining balance of a maximum FEMA grant (\$30,200 at the time of writing).

Regardless of the basis of the appeal, the applicant should provide as much documentation as possible. The disaster number, the application number, the applicant's name, date of birth, pre- and post-disaster addresses, and place of birth should be included on all pages of the appeal.

### ***Appeal Response and Subsequent Appeals***

FEMA has 90 days to issue a written decision to an appeal but will usually respond within 30 days or less. Minimal explanation of the appeal decision is provided, and formal requests for an explanation will be ignored. In general, FEMA will provide nothing more than a code in response to an appeal (e.g., IN INS, meaning ineligible due to insurance coverage). However, the applicant or her representative may contact the Service Center to obtain more information about the basis for the appeal decision.

If the applicant is unhappy with the results of the appeal, she should immediately appeal again. It may take 3 or more appeals before the applicant obtains a grant adequate to meet her basic needs. By contacting the Service Center to determine the basis for the denial of the appeal and obtaining her full case file, you will have a better sense of the type of documentation you will need to support a second or third appeal. Never give up.

### **Rental Assistance Recertification**

FEMA usually grants between one and three months of rental assistance at a time. Pursuant to 44 CFR 206.114(a), "FEMA expects all recipients of assistance under this subpart to obtain and occupy permanent housing at the earliest possible time." For that reason, the applicant for continued assistance must provide documentation showing that they are making efforts to obtain permanent housing at each recertification. Clients should be encouraged to keep a log of their apartment search, including the address and telephone number called, whether or not they viewed the apartment, and the reason why they did not lease up on that unit. Applicants should also regularly reach out to the Service Center or their local Disaster Resource Center to seek advice on their apartment search. The key is to show a good faith effort to obtain permanent housing.

Pre-disaster tenants' and homeowners' recertification applications seem to be reviewed under a somewhat different standard. As noted in 44 CFR 206.114(b)(3), "FEMA generally expects that pre-disaster renters will use their initial rental assistance to obtain permanent housing." The pre-disaster renter will therefore have to show that

alternative housing that is appropriate in size and cost was unavailable or that their good faith search did not general a rental agreement. Homeowners working on repair of their home will be more likely to be recertified by showing that they expect their home repairs to take an additional specified number of months to be completed. Homeowners expecting to participate in the FEMA buy-out program, discussed in the Hazard Mitigation Grant Program section, are likely to be able to receive continuing assistance by showing documentation of program participation. Homeowners planning to become renters on a permanent basis are more likely to have their recertification applications reviewed like those of pre-disaster tenants.

In addition to documenting efforts to obtain permanent housing, the applicant for rental recertification must submit rent receipts showing that they have exhausted FEMA rent funds already received and provide documentation of continuing need. FEMA always demands a written lease, so renters should insist on obtaining one from their landlord. FEMA is most likely to cover rent payments only, not utilities, so it is in tenants best interests to secure apartments that include utilities in the monthly rental charge.

With each notice of rental assistance issued by FEMA, the applicant will receive a rental recertification form, included here in the Appendix. Applicants for continuing assistance must submit that form with all supporting documentation within 90 days of the receipt of the notice. Failure to do so may result in the loss of ongoing assistance.

## **Recordkeeping Requirements**

FEMA randomly audits approximately 1% of all benefit recipients and may target certain applicants for audits based on particular criteria that are not publicly known. Where the applicant cannot demonstrate that benefits were spent on the housing expenses or other needs allowed by FEMA, the applicant's benefits may be recouped by the agency. For that reason, recipients must save documentation of disaster-related expenses for at least three years. If FEMA determines that recoupment of benefits is appropriate, the recipient may submit an appeal, request a payment plan or compromise, or both. The FEMA Disaster Recoupment Fairness Act of 2011, P.L. 112-74 (2011), which allows for equitable waivers of recoupment, does not apply to disasters that occurred after December 31, 2010.

## **Frequently Asked FEMA-Related Questions**

### **1. My vacation/second 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. Further, in certain circumstances, your town may opt to apply for funding through the FEMA Hazard Mitigation Grant Program to purchase your vacation/second home for 75% of its pre-disaster value.

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

No, FEMA cannot pay utility bills. However, local charitable organizations may be able to help for a short period. Contact Vermont 2-1-1 for a referral to a local agency that may be able to help and/or apply for fuel assistance at your local Community Action agency.

**3. 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. Recipients of 3SquaresVT may be able to apply for replacement benefits, but the deadline to apply for replacement benefits is likely to be very short (less than a month after the disaster).

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

Many homeowners' insurance policies cover debris removal. FEMA may provide assistance with debris removal in some cases. Your local officials can also tell you if there is a pickup schedule for debris in your area.

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

Probably not. FEMA reviews requests for reimbursement of the cost of a generator on a case-by-case basis. Your best bet is to frame this as part of your home repair costs, as home repair items are significantly more likely to be covered than "other needs." If it is determined that the generator is related to "other needs," then you are likely to be referred to the SBA for a loan to help cover the cost.

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

A grant from the Individual and Households Program does not have to be repaid. Loans from the Small Business Administration must be repaid. If you spend your FEMA grant on items for which the funding was not allocated, you can be required to repay it. FEMA randomly audits recipients for up to three years after the grant was received. Save all receipts and other documentation of how you used your grant.

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

Please mail all correspondence to the following address:

FEMA – Individual and Households Program  
National Processing Service Center

P.O. Box 10055  
Hyattsville, MD 20782-7055

Or

Fax it to: 1-800-827-8112, Attn: FEMA

Write your name, disaster number, application number, pre- and post-disaster address, telephone number, and place of birth on all pages of your document and keep a copy for your own records.

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

You will receive a letter from FEMA telling you what the money is supposed to be used for. Be sure to read the “Applicant’s Guide,” the booklet included with your letter for additional information. FEMA randomly audits recipients for up to three years after the grant was received. Save all receipts and other documentation of how you used your grant.

**9. My FEMA grant of \$30,200 will not cover all of the repairs that I need to do to make my home livable again, and I don’t want to borrow more money. What should I do?**

If repairs to your home will exceed your FEMA grant allocation, you can apply for an SBA Loan to cover your unmet needs. For information about how to complete the loan application, or for more information on SBA assistance, call the SBA helpline at 800-659-2955, or visit [www.sba.gov](http://www.sba.gov). If an applicant is found to be insufficiently creditworthy to receive an SBA Loan, she may be eligible for additional FEMA grant assistance, but will never receive a FEMA grant in excess of the maximum allowed per federal regulations (\$30,200 at the time of this writing). Also contact local charitable organizations to see if additional assistance is available. Call Vermont 2-1-1 to find out about charitable organizations in your area and speak to your town clerk or Selectboard about local services and funding resources.

**10. I’m not satisfied with my FEMA grant – I think I should have gotten more money. What can I do?**

Submit an appeal as soon as possible, but no later than 60 days after receiving notice of your eligibility. All appeals must be submitted in writing by the applicant (best) or his authorized representative (who can help write the appeal even if the applicant is signing it). Explain why you think the decision about the amount of type of assistance is not correct, providing as much documentation as possible to support your claim. Label all pages with your name, the disaster number, your registration number, you pre- and post-disaster addresses, your telephone number, and your place of birth.

Fax your appeal to:

FEMA – Appeals Officer  
800-827-8112

or mail it to:

FEMA – Appeals Officer  
National Processing Service Center  
P.O. Box 10055  
Hyattsville, MD 20782-7055

**11. I'm confused about what's going on in my case and how FEMA is making its determinations. How do I get a copy of my file?**

If you need information about your case, you may request a copy of the information by writing to:

FEMA - Records Management  
National Processing Service Center  
P.O. Box 10055  
Hyattsville, MD 20782-7055

Provide your name, disaster number, registration number, date of birth, place of birth, pre- and post-disaster address, and telephone number. State the following:

**RECORDS AND INFORMATION REQUEST**

I, (name) am sending this letter to request the entire contents of my FEMA file, including but not limited to the following:

- Any and all inspection damage reports, including pictures, commentary, and so forth;
- Comments report (MR 01), contacts report, and any other relevant reports;
- Any and all correspondence;
- Application materials, including copies of documents I sent to FEMA;
- Determination notices; and
- Any and all information added to my file after the date this request is made.

Sign the request for information and date it. If your lawyer or advocate is submitting the request for you, then the request also must contain a statement signed by you giving that person your authorization to request this information.

**12. I had extenuating circumstances that prevented me from applying for assistance before the registration filing deadline, but I have damages from the disaster and need FEMA's help to pay for repairs. What can I do?**

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

**13. 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 rental assistance until your home is accessible, whether you are a renter or a homeowner.

**14. 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 both to make repairs to the road or bridge and to help you cover your rental costs while your home is inaccessible.

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

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

### **III. THE FEMA HAZARD MITIGATION GRANT PROGRAM: “BUY-OUTS” OF HOMES IN HIGH HAZARD AREAS**

The Hazard Mitigation Grant Program (HMGP) provides grants to state and local governments to implement long-term hazard mitigation measures after a major disaster declaration. Authorized under Section 404 of the Stafford Act and administered by FEMA, HMGP was created to reduce loss of life and property due to natural disasters. The program allows communities to engage in mitigation measures in the immediate aftermath and recovery period of a disaster.

HMGP funding is only available to state and local governments, Native American tribes, and certain non-profits within a presidentially declared disaster area. Individual homeowners do not apply directly to HMGP. A homeowner, landlord, or business interested in the program should speak directly to community leaders about their interest in participation in the program as soon as possible after the disaster.

HMGP funds may be used for projects that will reduce or eliminate the losses from future disasters. Projects must provide long-term solutions to problems, like elevating a home several feet to reduce the risk of flood damages rather than buying sandbags and pumps to fight a flood. In addition, a project’s potential savings must be more than the cost of implementing the project. Funds may be used to protect either public or private property or to purchase property that has been subjected to, or is in danger of, repetitive damage. Of particular interest to homeowners is the “buy-out” of real property for willing sellers. The local government may apply to FEMA for funding to purchase a willing seller’s home based on its pre-disaster value in order to demolish the structure and turn the property into open space use in perpetuity.

In order to participate in the buy-out program, the project (*i.e.*, this particular property acquisition and demolition) must meet five criteria:

- The project conforms to Vermont’s Hazard Mitigation Plan.
- The project provides a beneficial impact on the disaster area.
- The application meets environmental requirements.
- The project solves a problem independently.
- The project is cost-effective.

Local jurisdictions develop and submit written project applications. Vermont Emergency Management and the state mitigation project selection committee, which includes FEMA representatives, prioritize and select project applications that best suit the five criteria mentioned above. These applications are then forwarded to FEMA Region 1 in Boston for eligibility review. Since funding is not unlimited, local communities, the



State of Vermont, and FEMA will be forced to reject some project applications even if they satisfy all of the eligibility criteria.

Homeowners are not forced to participate in the program. It may, however, be the only way for a homeowner to obtain anything close to fair compensation for her damaged property.

Homeowners are generally offered compensation equal to 75% of the pre-disaster value of their property. In its application for HMGP funds, the locality will estimate a total project cost for purchase of the home, demolition of structures and removal of hazardous substances, and conversion of the land into green space. The standard pre-disaster value will be the assessment on file with the local lister. The homeowner can challenge this assessment by providing documentation of the cost of major improvements made since the last assessment or submitting a pre-disaster appraisal report. In one Irene buy-out case, the buy-out value of the home increased by a whopping \$140,000 after the homeowner submitted records of her improvements to her home. If a project is granted final approval, FEMA will cover 75% of the total project cost. Most localities have insufficient funds to cover the remaining 25% of project costs, forcing the homeowner to take that amount as a loss.

The homeowner may be eligible to receive the balance of her project costs not covered by FEMA through other means. If the homeowner had Increased Cost of Compliance coverage as part of his flood insurance policy, the ICC coverage may, if the town chooses, be used to cover all or some of the 25% project cost balance. At the State's discretion, other funding may be allocated to cover all or some of the 25% not covered by HMGP. For example, after Irene, the State allocated almost \$6 million of HUD CDBG Disaster Relief Funds toward the buy-out program to make homeowners as close to "whole" as possible.

FEMA duplication of benefit rules apply to HMGP. In calculating the amount of funding to be received by the homeowner for the buy-out, the locality will subtract the following from the amount of the check to be offered at the closing table:

- FEMA housing repair grants (unless they were spent prior to the homeowner's participation in HMGP);
- Insurance payments specifically for real property loss (unless they were spent prior to the homeowner's participation in HMGP);
- Charitable donations for home repair or replacement costs (the town may decide to use such donations as part of the 25% not covered by FEMA).

When the locality purchases the property, the sale must provide the locality with clear title, free of any encumbrances or liens. Primary and junior lienholders must be paid in full or otherwise release all claims against the property. The homeowner and her advocate should look into the nature and value of all encumbrances on the property. If at all possible, prior to closing, the homeowner and advocate should attempt to negotiate

with lenders and creditors to eliminate or reduce all liens on the property. Where the HMGP buy-out amount does not cover all liens, the buy-out process will be significantly delayed. The town must be able to obtain clear title before the process can be completed.

Under normal circumstances, a buy-out may not be completed until approximately 18 months after the disaster. Where there are encumbrances on the property, the process can take even longer. In other states, advocates have reported that they are working on buy-out cases three or four years after a disaster rendered their client's home uninhabitable. It is important to set fairly low expectations for participants in the buy-out program so they do not anticipate immediate relief and do not believe they will be made whole by the program.

## IV. INSURANCE

### Obtaining an Insurance Pay-Out

Immediately after a disaster, property owners (or car owners) should file a claim or claims with their insurance carriers. Insurance is the first line of defense against damage from a disaster. FEMA's Individuals and Households Program will not provide assistance until the applicant has indicated either: (1) that she has no insurance whatsoever; (2) her insurance does not cover the type of damage her property sustained; or (3) her insurance does not adequately cover the extent of the damage. For more information on insurance law in Vermont, please refer to Chapter 23 of Title 8 and the regulations promulgated under their authority.

To file a claim, the insured should contact her agent immediately. If she is unsure of the name or contact information for her agent and cannot find her policy documents, call the customer service line for her carrier. It is the agent's/broker's job to assist its client (i.e., the person you are assisting) in pursuing a claim with the insurance company. It is critical that you or the person you are assisting contact the agent/broker and report the loss even if the person you are assisting does not think she has insurance coverage for the type of damage incurred. If there is coverage, the coverage might be waived due to failure to notify the agent/broker promptly.

In addition to filing a claim, when speaking to her agent, the insured should request a copy of all of her policy documents if they were lost or damaged in the disaster. Lastly, the insured should also request information on how to change or cancel her policy and ask for copies of any required forms at this time.

If you are advising someone (homeowner or small business owner) who has suffered flood-related damages, the first thing you should know is that the typical homeowner's policy or small business policy does not cover flood-related damage. If the property owner lived within a Special Hazard Flood Area (see the Permit section of this manual for more information) and had a federally insured mortgage, pursuant to 12 CFR § 172.3,<sup>3</sup> she would have been required to acquire and maintain flood insurance. Otherwise, unless a mortgage-free homeowner knew she was in a floodplain or she was exceptionally cautious from having experienced flood damage in the past, most

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<sup>3</sup> 12 CFR § 172.3. Requirement to purchase flood insurance where available. (a) In general. A Federal savings association shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located.

homeowners or small business insurance applicants do not even think to ask about flood insurance. Further, most agents (at least before Irene) do not think to ask if the applicant wants or needs flood insurance. Private flood insurance is extremely expensive, but homeowners in a floodplain are able to purchase flood policies through the National Flood Insurance Program (NFIP) (managed by FEMA). Because NFIP insurance is a relatively low cost option available to homeowners and small business owners who otherwise wouldn't be able to get insurance, what it covers and doesn't cover is very strict. See the FEMA website (<http://www.fema.gov/national-flood-insurance-program>) and the State of Vermont website (<http://www.dfr.vermont.gov/insurance/insurance-consumer/vermont-flood-information>) for more information on what you can expect and not expect to be covered under the NFIP policy. In any case, whether the insured has a flood policy or not, she should contact her agent immediately. Lastly, even in the event that the person you are assisting does not have flood insurance, they may have "water damage" coverage under their homeowner's policy.

The homeowner will be expected to take reasonable steps to prevent further damage and safety risks. If the homeowner is going to make any repairs in order to mitigate the damage to the property or to ensure safety before an adjuster is sent out to the property, he should take pictures of the damage. Advise the client to take pictures of the scene of the damage (an entire room or the entirety of the exterior of the property) in addition to close-up pictures. The pictures should be labeled and dated as soon as possible. If, prior to the adjuster's inspection, the homeowner begins making repairs or spends money to prevent further damage, he should keep accurate records of what he spends. All receipts and invoices should be maintained. The homeowner should also separate items that may be cleaned and/or repaired. Lastly, before discarding any items that the policy holder plans to submit a claim for as damaged or destroyed, the homeowner should check with his insurance agent.

The client should ask the insurance company (or ask the agent/broker to ask the insurance company) to send an adjuster out to assess the damage as soon as possible. This assessment will start the process rolling on any claim. The client will receive notice of pay-out for insurance and be required to sign a final loss pay-out agreement. If the client is unhappy with the pay-out, however, she need not accept the assessment of the insurance carrier.

The client can appeal the findings of the insurance carrier. First, in writing, demand the reasons for the claim denial or the limited recovery. Draft an appeal explaining why the amount offered is unacceptable. To support the appeal, the client should provide as much documentation as possible to show that the insurance adjuster erred in the analysis of the level of damage. Provide pictures taken immediately after the disaster, receipts or invoices for repairs already completed or estimates for repairs needed on the property. The client can provide alternative documentation assessing the level of damage. For instance, after a flood, the town zoning administrator or health officer may have completed a substantial damage analysis. The listers may have reassessed the property and documented a new value for the structure and (in some flood cases) the land as well. Lastly, the client can hire his or her own adjuster. Vermont Law defines a

public adjuster to mean any person who investigates claims and negotiates settlement of claims arising under policies of insurance in behalf of the insured under such policies or who advertises or solicits business as such adjuster. See 8 V.S.A. § 4791. Public adjusters are licensed by the Vermont Dept. of Financial Regulation: 828-3303.

Advise the client that he may not receive all of the insurance settlement funds. The mortgage servicer may also be listed on the insurance policy. If damages are under \$10,000, it is likely that the settlement check will be sent directly to the client. If it is in excess of that amount, the mortgage servicer is likely to hold the funds in escrow in anticipation of completion of repairs. Contractors will be required to provide final invoices indicating that the repairs have been completed. These invoices must be sent to the mortgage servicer, often along with a form to be completed by the contractor indicating that repairs are complete and when paid, no liens shall be placed on the property. The mortgage servicer may send an inspector of its own to verify that the property is in its pre-disaster state before issuing payment. Since mortgage servicers and policies vary, it is prudent to read the policy and mortgage servicer's information carefully to understand their practices. And of course, if at any time the insurance carrier or servicer's practices do not make sense for your client, contact the agent or the insurance department of the servicer to try to work out alternative arrangements.

If the person you are assisting believes that her insurance company (or NFIP, in case of flood) has not adjusted the loss promptly or properly, or if the client feels that her agent/broker failed to properly advise her to obtain flood insurance or was supposed to obtain such insurance but did not do so, you can contact the State of Vermont Department of Financial Regulation (DFR) (formerly known as the Vermont Department of Banking, Insurance, Securities, and Health Care Administration (BISHCA)). The agency will assist the homeowner or small business person if there is an issue with either an agent/broker or insurance company. See <http://www.dfr.vermont.gov/insurance/home>; 800-964-1784.

*Pertinent Numbers and Contact Information*

VT Department of Banking & Insurance	1-802-828-3301
VT Department of Banking & Insurance website	<a href="http://www.bischca.state.vt.us">www.bischca.state.vt.us</a>
National Flood Insurance Program	1-888-Call-flood
National Flood Insurance Program website	<a href="http://www.floodsmart.gov">www.floodsmart.gov</a>
VT Emergency Management Agency	<a href="http://www.vem.vermont.gov">www.vem.vermont.gov</a>
VT Office of Attorney General	1-802-828-3171
Attorney General Website	<a href="http://www.state.vt.us/atg">www.state.vt.us/atg</a>
VT Builders Association	1-802-773-0672
VT Builders Association website	<a href="http://www.cvthomebuilders.com">www.cvthomebuilders.com</a>

### *Some Cautions For The Insured*

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

**2. Ensure proper credentials if utilizing “public adjusters.”** You may be approached by a "public adjuster" who will offer to assist you in handling or expediting your insurance claims in return for a percentage of your insurance benefit payments. Public adjusters are independent adjusters that provide service for a percentage of the claim settlement. Public adjusters often state that the fee is generally offset by the ability to obtain a better settlement than the insured would be able to obtain on your own. Public Adjusters are regulated under Title 8 V.S.A. Chapter 131 which provides for proper licensing of Public Adjusters that an insured should consider if contracting with such an adjuster.

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

### **Changing Coverage After a Disaster**

Where the homeowner’s property is completely destroyed or is uninhabitable, cancel or reduce insurance coverage as appropriate. This can save the homeowner several hundred dollars per year for homeowner’s insurance and several thousand dollars per year for flood insurance.

Read the terms of the mortgage deed to determine whether or not insurance coverage was required under its terms. In particular, note that federal flood hazard regulations mandate that federally insured mortgagors carry flood insurance at least equal to the assessed value of the property. If the mortgagor fails to do so, the mortgage servicer is required to secure force-placed insurance, which is often thousands of dollars more than NFIP policies.

If the mortgage requires coverage, contact the lender and insurance agent to find out what documentation will be required to reduce or eliminate the policy amount. For instance, the client may be required to provide a copy of the most up-to-date lister card that notes the change in value, or in some cases, may be required to hire an appraiser to determine the post-disaster value of the structure. The insured is likely to be required to sign a form or statement indicating what she wishes her new coverage value to be.

## Frequently Asked Questions

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

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

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

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

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

You should request the insurance company to send an adjuster to look at your property. It is best if this request is in writing. If necessary, you should contact the VT Department of Banking and Insurance at 1-802-828-3301. However, this will not be done until public officials have declared it safe and have allowed such work to begin.

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

If circumstances allow, make a list of all property damaged or destroyed, take pictures, collect names, addresses and telephone numbers of witnesses, obtain repair estimates, keep a record of expenses, such as alternative housing, etc., and locate original bills and receipts for lost items. If you do not have or cannot locate a complete household inventory, try to picture the contents of every room in your home and then list and describe all items that were damaged or destroyed. Include furniture, major appliances, electronic equipment, pictures or accessories in each room, as well as hobby items, tools, home maintenance items and seasonal items such as holiday decorations and outdoor furniture. As accurately as possible, try to remember when and where you bought each item, how much you paid and the

cost of replacement. It is also helpful to include brand names and model numbers where known. Submit these along with your claim to the insurance company. Preparing a list prior to any disaster is obviously prudent.

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

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

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

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

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

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

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

You should **consult a lawyer** before signing any release or waiver and before cashing any check from the insurance company which might be deemed full and



final payment of your claim. Before you settle with the insurance company, be aware of the full extent of your damage and the full value of your claim. It may be important for you to get estimates or to actually have the work completed before you agree to a specific cost figure.

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

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

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

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

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

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

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

Call your insurance company. Note that flood insurance does not take effect until 30 days after the insured has purchased the policy.

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

If your policy provides coverage for your loss, you will be insured for Additional Living Expense coverage which pays for the costs you incur in excess of your normal living expenses. For example, if you normally spend \$1500 for mortgage/rent, utilities, food, etc. and you now spend \$2000 due to the disaster, the insurance company will reimburse you \$500. Be sure to save all receipts. You should also ask the company representative if there are any restrictions on

where and how long you can stay and how much you are allowed for hotel rooms. If you stay with a relative or friend, the company may reimburse your host for lodging only if you can show proof of actual payment. Extra expenses, such as higher utility bills by the host, would definitely be considered. You can also submit a claim for the cost of storing your personal property until your home is ready for occupancy.

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

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

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

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

**16. Is food spoilage covered?**

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

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

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

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

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

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

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

**20. 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.

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

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

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

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

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

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

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

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

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

The coverage depends upon the cause of the loss and upon whether you purchased Comprehensive Coverage, Specified Causes of Loss Coverage, or Collision Coverage. Specified Causes of Loss Coverage typically covers damage caused by fire, theft, windstorm, flood, mischief or vandalism. Comprehensive Coverage typically covers any cause of loss except collision or overturns. If you purchased only Collision Coverage, then there likely is no coverage.

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

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

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

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

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

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

# V. PERSONAL PROPERTY

## Frequently Asked Questions

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

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

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

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

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

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

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

Absent insurance, FEMA rules apply. FEMA will refer most applicants seeking compensation for damaged or destroyed personal property to the SBA for a loan. Only if that loan is denied or if the SBA application requirement is waived because of the applicant's low income will the applicant be considered for grant funding for other needs assistance. ONA is extremely limited, covering only essential items of standard quality.

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

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

## **VI. SMALL BUSINESS ADMINISTRATION DISASTER LOANS**

SBA provides low interest disaster loans to homeowners, renters, businesses of all sizes and private, nonprofit organizations to repair or replace real estate, personal property, machinery and equipment, inventory and business assets that have been damaged or destroyed in a declared disaster. In addition, it offers economic injury disaster loss loans to businesses affected by a disaster. This manual will deal exclusively with home and personal property loans. For more information on these types of loans and other SBA services, see [www.sba.gov](http://www.sba.gov) and refer to 13 CFR § 123.1-123.108.

### **Home and Personal Property Loans**

As a homeowner, renter, and/or personal-property owner, your client may apply to the SBA for a loan to help recover from a disaster. An application will be mailed to your client along with their notification of FEMA award (or notice of denial). In addition, SBA offers the option of filing home and business disaster loan applications through the Electronic Loan application available at [www.sba.gov](http://www.sba.gov).

Renters and homeowners alike may borrow up to \$40,000 to repair or replace clothing, furniture, cars, appliances, etc. damaged or destroyed in the disaster. Homeowners may apply for up to \$200,000 to repair or replace their primary residence to its pre-disaster condition. The loans may not be used to upgrade homes or make additions unless such alterations are required by local building codes or authorities. Loans may be increased up to 20% of the total amount of disaster damage to real estate, as verified by the SBA, to make improvements that lessen the risk of property damage by future disasters of the same kind.

### ***Interest Rates and Loan Terms***

For clients unable to obtain credit elsewhere, SBA loan interest rates will not exceed 4%. After Tropical Storm Irene, for instance, borrowers who could not obtain credit elsewhere were able to obtain loans with interest rates of 2.5%. For those who can obtain credit elsewhere, the interest rate will not exceed 8%. The SBA determines whether an applicant has credit available elsewhere. The SBA offers loans with long-term repayments in many cases up to 30 years. Installment payment amount, maturity and other terms are determined on a case-by-case basis, based upon each borrower's ability to repay.

### ***Applying for a Disaster Loan***

SBA offers several options to apply for a Disaster Loan. Disaster loan applications may be submitted through the Electronic Loan Application (ELA) at [www.sba.gov](http://www.sba.gov). Clients also have the option of submitting a paper application via mail.

Lastly, clients may also apply in person at any Disaster Recovery Center and receive personal, one-on-one help from an SBA representative. For information or to find a location, please contact SBA's Customer Service Center. Call 1-800-659-2955 (TTY: 1-800-877-8339) or e-mail [disastercustomerservice@sba.gov](mailto:disastercustomerservice@sba.gov).

### ***More Information on Electronic Loan Applications***

As a disaster victim, clients can apply for disaster loan assistance through the Electronic Loan Application (ELA). The ELA simplifies the application process and speeds delivery of assistance to you. The ELA allows anyone whose home or business was damaged by a declared disaster to apply for disaster loan assistance. Homeowners and renters can apply for damages to their home, personal property, and vehicles. Businesses can apply for damages to their real estate or business contents and for economic losses.

If a client is applying for assistance for a Presidential disaster declaration, homeowners and renters must register with the Federal Emergency Management Agency to obtain a FEMA Registration ID Number by calling 1-800-621-3362. The speech or hearing impaired may call (TTY) 1-800-462-7585.

It is recommended that clients have the following information available when completing the online application:

- Contact information for all applicants (current and alternate telephone numbers).
- Identity information for all applicants (social security numbers / FEMA registration number).
- Deed or lease information, if available.
- Insurance information – if applicable, the name address, and policy number of any insurance carrier liable for the loss.
- Financial information (income, creditors' names, monthly payments, balances).

### **Disaster Loans Use of Proceeds**

The SBA has specific guidelines regarding how the proceeds of such loans may be used. Physical Disaster Loan proceeds may be used for the repair or replacement of the following:

- Real property
- Machinery
- Equipment
- Fixtures
- Inventory
- Leasehold improvements



SBA loans cover only uninsured physical damage. If a clients' property was insured and they are required to apply insurance proceeds to an outstanding mortgage on the damaged property, the client can include the amount applied in the disaster loan application.

The client should carefully document how proceeds are spent in case of audit.

### ***Mitigation Improvements***

If a loan application is approved, clients may be eligible for additional funds to cover the cost of improvements that will protect property against future damage. Examples of improvements include retaining walls, seawalls, sump pumps, etc. Mitigation loan money is in addition to the amount of the approved loan, but may not exceed 20% of total amount of disaster damage to real estate and/or leasehold improvements, as verified by SBA, to a maximum of \$200,000 for home loans. It is not necessary for the description of improvements and cost estimates to be submitted with the application. SBA approval of the mitigating measures will be required before any loan increase.

### ***Relocation***

Clients may use their SBA disaster loan to relocate. The amount of the relocation loan depends on whether you relocate voluntarily or involuntarily. If a client is interested in relocation, an SBA representative can provide more details on specific situations.

## **Refinancing with an SBA Loan**

SBA can refinance all or part of prior mortgages that are evidenced by a recorded lien, when the applicant (1) does not have credit available elsewhere, (2) has suffered substantial uncompensated disaster damage (40 percent or more of the value of the property), and (3) intends to repair the damage.

Homeowners may be eligible for the refinancing of existing liens or mortgages on homes, in some cases up to the amount of the loan for real estate repair or replacement.

## **How to Appeal an SBA Loan Decision**

SBA Appeals go to the Office of Hearings and Appeals: <http://www.sba.gov/oha>.

### **1. What must be included in an appeal petition?**

An appeal petition should argue why the SBA's decision is incorrect and should include any evidence that supports your argument. Note that any document already submitted to the program or Area Office does not need to be re-submitted on appeal. Use the SBA's regulations governing the client's type of appeal (see the FAQs for that type of appeal) and OHA's past decisions to help formulate the legal argument. Cite particular

regulatory sections by number, and cite particular OHA decisions by case name and 3-digit or 4-digit decision number.

The appeal petition must also include the following: (1) a statement as to why OHA has jurisdiction; (2) a copy of the SBA determination being appealed or, in NAICS cases, identify the solicitation being appealed; (3) a clear and concise statement of the facts; (4) the relief sought; (5) name, address, phone and fax numbers, email address, and signature (or the same information for the attorney); and (6) a certificate of service. 13 C.F.R. § 134.203(a). The appeal petition, excluding attachments, may not exceed 20 pages.

## **2. What is a certificate of service?**

Appellees are responsible for sending a copy of the appeal petition and any attachments to all the parties in the case (for a list of the parties that must be served, see the FAQs for each specific type of appeal). The certificate of service shows the judge that you have done so. 13 C.F.R. § 134.204(c), (d).

## **3. How do I file my appeal petition?**

At OHA by email, fax, mail, or delivery. OHA must RECEIVE the appeal petition before 5pm on or before the date that the applicable time period for filing expires (for the time period that applies to the specific type of appeal, see the FAQs for that type of appeal). Any filing received after 5pm is considered filed as of the next business day. Applicants must ensure that the appeal petition arrives at OHA no later than 5pm on the day the time to file expires. Late appeals will be dismissed.

If filing by email, send the appeal petition to [ohafilings@sba.gov](mailto:ohafilings@sba.gov). Send any communication as an attached document. If filing by fax, OHA's fax number is (202) 205-7059. If filing by mail or delivery, send or drop off the appeal petition to the following address: Docketing Clerk, Office of Hearings and Appeals, Small Business Administration, 8th Floor, 409 Third Street SW, Washington DC 20416. 13 C.F.R. § 134.204.

Recent changes to the Office of Hearings and Appeals (OHA) procedure regulations now allow emailing as an additional method of filing or service. When email filings are received by OHA, at [OHAFilings@sba.gov](mailto:OHAFilings@sba.gov), the party should receive a notice of receipt. Some filings emailed to OHA have not been successfully transmitted due to the size or content of the email. In accordance with 13 C.F.R. § 134.204(a), "The sender is responsible for ensuring that e-mail software and file formats are compatible with the recipient and for a successful, virus-free transmission." Applicants should call OHA, 202-401-8200, to confirm receipt of a filing, especially in the case of an appeal petition which must be received by OHA before the filing deadline.

## **4. I have filed my appeal. Now what happens?**

The OHA judge assigned to the appeal will issue a notice and order setting the close of record. An appeal is decided in a written decision or order setting out the pertinent issues, findings of fact (based on the record), and conclusions of law (based on statute, regulation, and prior case law). OHA staff cannot estimate the time a judge will take to decide an appeal.

## **Disaster Loan Payments**

There are several ways clients can make a payment on an SBA disaster loan: by phone, by mail, and online.

- **Payment by Phone:** Contact the SBA Customer Service Center toll-free at 1-800-490-2498 or 1-800-659-2955 (TTY: 1-800-877-8339). There is no fee for this service.
- **Payment by Mail:** Check or money order made out to the U.S. Small Business Administration with the loan number on the check and payment coupon, if available. Mail payments to:
  - U.S. Small Business Administration*
  - Collections*
  - P.O. Box 740192*
  - Atlanta, Georgia 30374-0192*
- **Payment Online:** Go to [Pay.gov](https://www.pay.gov).

## **VII. RECORDATION AND REPAIR-RELATED ISSUES CONFRONTING PROPERTY OWNERS**

Homeowners are likely to face many significant challenges in the aftermath of a natural disaster. Beyond the issues discussed in previous sections related to financial assistance through FEMA's IHP and HMGP programs and from insurance, property owners may face legal challenges related to boundary lines, permits, debris, contaminants, shifts in watercourses, and so forth. This section will address some of these issues.

### **Preserving Information about a Homeowner's Property**

Most of the information relevant to a property owner's legal rights to her land and the description of the land is kept in the Municipal Clerk's offices. Those records are generally well protected and most municipalities have been participating in a program that creates duplicates of the records stored on microfilm. However, there may be landmarks or other key features of a homeowners' property that may be damaged or disturbed by a natural disaster. These landmarks may have been used to outline the boundaries of the property on the homeowners' deed.

#### ***Boundary Line Issues Related to Markers***

When it is safe to return to the property, the homeowner should take photographs of the damage with as much detail as possible. If property boundaries are marked with monuments like iron pins, concrete markers, or the like, the homeowner should take pictures of the markers as soon after it is safe to return to the property. Take pictures of any disturbed markers and particularly the markers that are still in place. The homeowner should try to include the area around the markers, and anything that can be used to identify the location of the markers. This may become important as people work to repair the damage done by the disaster. If the markers are near roads, streams, or bridges that are damaged, the repairs may further disturb the markers. The repairs to a stream or watercourse may move the original banks, removing boundary markers. By having a record of where the markers were in relation to things that did not move, the process of restoring the markers and reestablishing the boundaries to your property may be easier. In addition to helping to address land boundary issues, these pictures will provide useful information to insurance adjusters and FEMA.

#### ***Boundary Line Issues Related to Shifting Watercourses***

In Vermont, many properties which abut watercourses share boundaries which are established by the watercourse itself or adjoining streams and tributaries. Where a shifting watercourse defines a property boundary, locating and resolving boundary disputes and riparian rights can be a significant issue subsequent to a high water disaster for property owners who are faced with refinancing and rebuilding destroyed buildings and premises.

In looking at the limited Vermont case law dealing with shifting boundaries defined by a watercourse, it appears that a contested resolution of a boundary will be a highly fact specific inquiry requiring expert testimony from a licensed surveyor. A few basic principles emerge from a review of the cases:

- First, natural monuments will continue to prevail over artificial monuments or metes and bounds descriptions. *Marshall v. Bruce*, 149 Vt. 351, 353, 543 A.2d 263, 264 (1988).
- Second, a watercourse is considered a natural monument when referenced in a deed but its utility as a reference point is destroyed where it can no longer be accurately located at historically relevant times. *Fly Fish Vermont, Inc. v. Chapin Hill Estates, Inc.*, 2010 VT 33, P 15, 187 Vt. 541, 547.
- Third, the general rule seems to be that changes in boundaries defined by a watercourse which are sudden, or by avulsion, do not alter the boundary location whereas changes which occur gradually over time, or by accretion, will alter the boundary accordingly. *Fly Fishing, Inc.*, 2010 VT 33, P 13, 187 Vt. at p, 546. See also, 9 R. Powell, *Powell on Real Property* s66.01[2]. at 66-5 to 66-7 (M. Wolf ed. 2008) and *Rood v. Johnson*, 26 Vt. 64, 72 (1853).
- Fourth, there appears to be a right to restore a streambed which is suddenly changed through avulsion or reliction but no corresponding right to remove or alter the “alluvion” which builds up over time through accretion. *Rood v. Johnson*, 26 Vt. 64, 72 (1853).

Should a boundary issue arise due to a flood, it is highly likely that a fact specific you will be faced with a mix of boundary alterations that will defy mechanical application of these rules. There will be some alterations which occurred before the flood event followed by alterations which occurred suddenly during the flood event. As discussed above, it is highly likely that a surveyor will be needed to pursue any effort to re establish a common boundary or relocate destroyed watercourses.

## **Permits**

Some town have adopted regulations that require a permit before you construct a structure, rebuild a structure, change the outside of a structure, construct improvements on your property, do electrical work or plumbing work, or work on the heating system in your house. Check with the Town Offices, usually the zoning administrative officer or someone in the Clerk’s office to determine which permits a homeowner may need prior to starting repairs. Also refer to the section below specifically addressing extra permit requirements for properties located in a floodplain. Please note that since Tropical Storm

Irene, many towns have either adopted or amended their regulations regarding construction of improvements in a flood plain.

When conferring with town officers, be sure to indicate that the work is being done to replace existing improvements. Some regulations impose fewer requirements when the work is being done to repair or replace existing improvements.

Along with requiring a permit before commencing work on your property, town regulations might also require an inspection or other certification after the work is complete. Check with the person that issued the permit to determine what post-construction inspections or certifications may be required.

Verifying that a property owner has obtained all applicable permits is a key step in making the repairs. If a property owner does work on his property without the proper permits, he may create a title problem. The law in Vermont presently holds that not having the proper municipal permits for work done on the property creates an encumbrance on the title that can only be resolved by obtaining the proper permits. Further, the homeowner may also incur fines for violation of the municipal ordinances requiring work permits or be required to restore the property to its condition prior to initiation of the repairs.

### **Special Permitting Issues for Property Owners in the Flood Plain**

The National Flood Insurance Program was developed in 1968 in order to establish an insurance program as an alternative to disaster relief, to distribute responsibility for floodplain management to all levels of government and the private sector, to set a national standard for regulating new development and repairs following a disaster in floodplains, and to create a comprehensive floodplain map for the entire country. FEMA has created a Flood Insurance Rate Map (FIRM) of the entire State. The FIRM will show where your client's property lays within floodplain boundaries and flood zones, as well as showing the base flood elevation in flood hazard areas. Many areas of Vermont are currently having their FIRM maps updated after river courses shifted during Irene.

Most communities in Vermont participate in the National Flood Insurance Program. By participating in the program, a community's residents are able to obtain flood insurance for their properties, but the community must also require residents to follow various floodplain management regulations, ordinances, and permitting schemes. See 44 CFR 59.22. The Stafford Act sets certain minimum criteria that must be satisfied for a community to be able to participate in NFIP, but most participating communities in Vermont have developed more stringent standards. Thus, to appropriately advise a client with a damaged home in a floodplain, the advocate must look into the locality's flood hazard regulations.

#### ***Applicability of Flood Hazard Regulations***

Before a homeowner begins repair on flood damage to her property, she must determine the location of her property on the FIRM map. The FIRM map provides the contours for the Special Flood Hazard Area (SFHA). The SFHA is the “floodplain,” *i.e.*, the area that is subject to a 1% probability of a certain level of flooding over the course of 100 years. Within the SFHA, subzones are also delineated to demonstrate greater degrees of hazard.

If the property is not in the floodplain, the homeowner need only see her local Zoning Administrator to obtain any permits necessary to repair the home (permits may also be required from ANR for repairs to septic systems or DPS for electrical systems), as discussed above. Even if the waterway adjacent to the homeowner’s property has shifted course such that it has rerouted itself within a yard of the client’s back door, the FIRM map will likely to take years to change, so the homeowner will not be required to comply with regulations affecting properties in the SFHA.

If the home is in a floodplain, the homeowner should request a substantial damage determination by the local zoning administrator (ZA). “Substantial damage,” as defined by 44 CFR 59.1, means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred. If the ZA determines that the structure was not substantially damaged, the homeowner need only obtain the standard permits required by the town and State and may begin repairs. If the property is determined to be substantially damaged, repair work will be required to comply with the locality’s flood hazard regulations, which can create a significant financial burden for the client.

### ***The Substantial Damage Calculation***

The substantial damage determination is made based on the FEMA formula described above:

IF cost to repair ÷ market value of building  $\geq$  50%, THEN damage = substantial

Market value is the price a willing buyer would pay for the structure alone, prior to the disaster, reflecting the structure’s quality, the age of the building components, and so forth. The location of the structure also influences the value of the structure even though the value of the land itself is not included in the calculation. The cost to repair the structure is calculated for full repair to the building’s before-damage condition, even if the owner elects to do less. It must also include the cost of any improvements that the owner opts to include during the repair project. Thus, because the formula is based on “cost to repair,” not “cost of repairs,” savings to the owner from doing work herself, obtaining donated materials or time, or forgoing repairs will not affect the substantial damage determination.

Once a structure has been determined to be substantially damaged, the owner must comply with flood hazard regulations pertinent to the special flood hazard zone

wherein the structure lies. In accordance with NFIP regulations, town zoning regulations pertaining to the repair of a substantially damaged structure require elevation of the structure to, at a minimum, base flood elevation. In Vermont, municipalities participating in the NFIP program have made this requirement more strict, requiring an elevation of at least BFE plus 1 foot. In addition, for mobile homes, specific anchoring and stabilization requirements must be satisfied. Towns may also require permits in some instances for repairs to non-substantially damaged structures in the floodplain, for replacement of fuel tanks and the like, and may bar the replacement of accessory buildings like sheds. Further, in some localities, the homeowner may be required not only to seek a permit from the Town ZA, but also to seek a conditional use permit through the Development Review Board. Again, the homeowner or advocate will need to review the local flood hazard regulations to determine what will be required. Since the Town ZA will be reviewing any application for a permit, discussing requirements and intended projects with the ZA will help prevent errors in the application process and possible misunderstandings later.

Compliance with flood hazard regulations is often extremely costly. In some areas of Vermont, the FIRM map includes measurements of the BFE. However, in most locations, it will be the homeowner's responsibility to provide a surveyor's report of the BFE with any and all applications for permits to conduct repairs or substantial improvements. The surveyor's report is likely to cost well over \$1,000. Lifting a structured home (i.e., not a mobile home or manufactured home) off of its foundation to elevate the first floor above BFE costs tens of thousands of dollars. For that reason, many homeowners will wish to contest a substantial damage finding. Homeowners should understand, however, that by rebuilding their home without coming into compliance with flood hazard regulations puts them at risk of sustaining significant damage in a subsequent disaster, and potentially putting their safety at risk.

### ***Appealing a Finding of Substantial Damage or the Applicability of Flood Hazard Regulations***

A homeowner can appeal a substantial damage determination by challenging the pre-disaster market value of the structure or the cost to repair. Acceptable methods of proof for pre-disaster market value include: a professional appraiser's report (excluding the value of the land); the replacement cost for the structure, minus a depreciation percentage based on age and condition of the structure pre-disaster; the tax assessment value adjusted by the lister to reflect market conditions; or the value of other, similar buildings taken from NFIP claims data. To challenge the cost to repair, the homeowner should obtain an estimate from an objective third party, such as a licensed general contractor, or insurance adjuster estimates.

A homeowner may also challenge the classification of their property on the FIRM map. To do so, the homeowner must submit a letter of map amendment (LOMA) to FEMA. With the LOMA, the homeowner must provide his recorded deed, the FEMA MT-EZ form (found on FEMA's website), a computer mapping (GIS) based flood map (obtainable from the local ZA or county DRB), a FEMA FIRMette map (available from



the municipality), and the structure's elevation data (obtained by hiring a surveyor or engineer). If the structure is not in a SFHA, the homeowner will not be bound by the town's flood hazard regulations and will not be required to purchase flood insurance, thus, it may prove to be a worthwhile investment where it appears there may be an error on the FIRM map or where the waterway has shifted course such that the floodplain itself has been altered.

### ***Flood Hazard Regulations Pertaining to Alterations to Waterways***

Prior to making any change to a waterway, including efforts to restore the waterway to its pre-disaster condition, the client must obtain a permit from the ZA and, depending upon the amount of work to be done, may need to obtain a permit from ANR as well.

If a homeowner's land may be facing imminent damage because it is next to a river or stream that has eroded its banks, the homeowner may be able to obtain free and immediate assistance from the Natural Resources Conservation Services' Emergency Watershed Protection Program (EWP). The EWP is administered through the Vermont offices of the USDA located in White River Junction and Colchester. The program is designed to help protect property that is in threat of further damage if not immediately repaired. Homeowners cannot apply for assistance on their own. Grants are made to a sponsoring agency, usually the local municipality, which then administers the grant to construct embankment erosion measures to protect existing buildings and structures threatened by erosion.

In applying for funds from the EWP, the sponsoring municipality must sign a document entitled "Assurances Relating to Real Property Acquisition" and provide the NRCS with an attorney's opinion that it has sufficient rights from the fee owner of the property to implement the project. In turn, the sponsoring municipality will seek an agreement directly with the fee owner which passes all of the obligations to implement the project to the fee owner including any monetary or in kind contributions. It will also seek indemnifications and hold harmless agreements with the fee owner and impose future restrictions on the use of any land directly involved in the project. More information and contact information for NRCS offices can be found here: <http://www.vt.nrcs.usda.gov/programs/EWP/EWP.pdf>.

### **Water Supplies and Wastewater Disposal**

Certain natural disasters may adversely affect your water supply or wastewater disposal system. Flowing waters may disturb the area around your well or debris may damage the well resulting in contamination. As soon as it is safe, you should have your water tested for contaminants. The Vermont Department of Health performs these tests. You may obtain a kit from the Vermont Department of Health: [http://healthvermont.gov/enviro/ph\\_lab/water\\_test.aspx](http://healthvermont.gov/enviro/ph_lab/water_test.aspx). Private testing labs can conduct more extensive tests but there is a cost to having a private lab test your water. You

should test the water periodically after the disaster because the damage may not be immediately apparent.

If your water is contaminated and you must make repairs to the well or the water supply system or if you must locate a new water supply because your water supply cannot be fixed, you must contact the Department of Environmental Conservation before you do work on the water supply. You may need a permit before doing the work, and you may need the help of a professional engineer or site technician to determine what work is needed and where it is appropriate to construct a new water supply system. The Regional Engineers of the Department of Environmental Conservation are assigned to one the 4 regional offices in the state. If you have access to the Internet, you can find the location of your regional office at <http://www.anr.state.vt.us/site/html/location.htm> or you can call the Agency of Natural Resources at 802-241-3808 and they will help you find the appropriate regional office.

If the disaster damaged or destroyed your wastewater disposal system (leach field or any of the other treatment facilities) you should contact the Regional Engineers office to determine if you need a permit to repair, restore or replace your wastewater disposal system.

The applicable Environmental Protection Rules require that you obtain a permit to operate a failed water supply system or a failed wastewater disposal system. The purpose to that provision is to encourage land owners with damaged or defective water supply or wastewater disposal systems to contact the Department of Environmental Conservation to determine how best to make the water supply safe and the wastewater system functional. The rule provide that if you cannot repair your water supply or wastewater system to the standards set out in the regulations, the Department will work with you to find a “best fix” that will improve the safety of your water supply and the functioning of your wastewater system.

Checking with the District Environmental Commission is a key step in making the repairs to your water supply and wastewater disposal system. If you make repairs, install a new water supply or do work on your wastewater disposal system without the proper permits, you may create a problem with the title to your real property. The law in Vermont presently holds that not having the proper permits for your water supply and wastewater disposal system creates an encumbrance on the title to your property that can only be resolved by obtaining the proper permits.

## **Hazardous Materials/Solid Waste**

If there is debris from a natural disaster on your client’s property, the method for removal will depend on the type and amount of waste on the property. In any case, advise the property owner to be careful in handling and disposing of the debris.

Large debris may be removed by the municipality or the Army Corps of Engineers. For instance, following Irene, many towns took charge of removal of gravel,

large and small stones, and trees that had piled up along riverbanks, including debris that had landed on private property along watercourses. Consult with the Town Manager or Clerk to find out if the municipality will be taking such action prior to paying for costly debris removal.

In the event of a disaster, the town may also provide dumpsters for the purpose of removing debris from private property. In the alternative, following Irene, some trash collection services donated dumpsters to help homeowners clear their properties. Contact the Town Manager or Clerk to find out if such options exist in your client's neighborhood.

If all else fails, the homeowner will have to use the local landfill or waste station. Note, however, that the following cannot be disposed with other debris and trash:

- Toxic chemicals, including: pesticides, pool chemicals, acids, drain cleaner, etc.
- Explosives, including fireworks and flares
- Ammunition
- Unprotected "sharps," including needles and broken glass
- Car batteries and rechargeable batteries
- Electronics
- Mercury products, including: fluorescent bulbs, thermostats, thermometers
- Toxic car products, including: Oil, gas, brake cleaner, tires, etc.
- Painting materials, including: Oil-based paint, stain, varnish, paint thinner and stripper
- Fuel tanks, including: propane cylinders, gas cylinders, etc.
- Large appliances, including: refrigerators, freezers, stoves, washers, dryers, and scrap metal.

After a disaster, it is likely that regional household hazardous waste collections will be held. See ANR's website for additional information.

## **Frequently Asked Questions**

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

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

preserve the property, and (iii) may move the property if necessary to use the land, provided such action is taken in a reasonable manner.

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

Town health officials and the Division of Fire Safety do not inspect private, single-family homes for safety. Only if a structure poses an imminent risk to public health does the government have the power to condemn the property. It is up to the homeowner to hire a contractor or electrician to determine the safety of the home.

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

Yes. A single family home can be condemned only if it poses an imminent risk to public health. Rental properties, conversely, can be condemned by the Division of Fire Safety based on electrical, fire, or structural hazards, or by the local board of health for a variety of other problems.

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

This form of condemnation (determining that a structure is no longer habitable) is not a “taking” for public use. The government would not be liable to the property owner where it has condemned the property in the interest of public safety, and in any case, the value of a condemnable property is generally \$0. Insurance or FEMA or similar relief will be the sole source of recovery.

**5. 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. A separate policy purchased through the National Flood Insurance Program is the only policy that covers homeowners in the event of a flood. You may have been required to purchase flood insurance if your home was in a floodplain or floodway and you had a federally insured mortgage. Normal insurance policies may cover water damage inside the home from direct or blowing rainfall, but it normally does not cover damage from surface water or rising water. Windstorm insurance normally will be limited to greater-than-normal wind conditions, such as from a disaster. You should read your policy, talk to your insurance agent, and consult an attorney if you have questions.

**6. 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.

**7. The building that I own was damaged by the disaster and is uninhabitable and unsafe but one of my tenants won't move out and won't pay rent.**

If the building is uninhabitable, contact the Division of Fire Safety or your local Town Health Officer. They will determine whether or not the property is unfit for human habitation, and could order the tenant to vacate the unit. Refer the tenant to FEMA for housing assistance.

If the inspector does not conclude that the rental unit is uninhabitable, but only that certain repairs need to be made, it is your duty as a landlord to make those repairs within a reasonable period of time. Notify your tenants of the hazards and give them an estimate of when repairs will be completed.

If the apartment is not uninhabitable and you nonetheless want your tenants to move out, you can offer to buy them out of the rental agreement (cash for keys) or you can terminate their tenancy by providing them with written notice and filing a complaint for eviction should the tenants overstay the termination date.

Landlords should be encouraged to contact the Disaster Legal Assistance hotline at 1-800-889-2047 for referrals.

**8. I'm a landlord. Can I be liable to my tenant if he or she is harmed as a result of the condition of the property?**

If the tenant was injured during the disaster itself and you had not negligently maintained the property before the disaster, the tenant's injury will be due to an Act of God, and you cannot be held liable. If the tenant suffered the injury after the disaster because you failed to exercise reasonable care by making prompt repairs, affording notice to the tenants of possible problems in the apartment, or because you made repairs without exercising appropriate care, you may be held liable if the tenant is injured.

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

Under some circumstances, the government may have liability if its employees were negligent and caused the damages. FEMA staff is immune from suit, even if they were negligent in the performance of their duties. Even at the state level, under the doctrine of "sovereign immunity," governmental authorities are generally immune from liability for the negligent acts of their agents and employees. The doctrine of sovereign immunity normally applies to

“governmental functions” such as crime prevention, flood control, fire fighting, preservation of health, etc.

## **VIII. MORTGAGE AND REFINANCING PROGRAMS AND FORECLOSURE PREVENTION**

### **Mortgage and Refinancing Programs for Disaster Victims**

Several federal agencies have home refinancing, repair, or replacement purchase programs that may benefit a client whose home was damaged or destroyed by a major disaster even if she is not at risk of default or underwater on her mortgage.

- HUD's Section 203(k) loan program enables those who have lost their homes to finance the purchase of a new home or refinance a house along with its repair through a single mortgage. This program encourages lenders to make mortgages available to borrowers who would not otherwise qualify for conventional loans.
- HUD's Section 203(h) program provides FHA insurance to disaster victims who have lost their homes. Borrowers from participating FHA-approved lenders are eligible for 100 percent financing, including closing costs.
- USDA Rural Development Direct Loan Program: Used to buy, build, or improve the applicant's permanent residence. New manufactured homes may be financed when they are on a permanent site, purchased from an approved dealer or contractor, and meet certain other requirements. Under very limited circumstances, homes may be re-financed with direct loans. The home value may not exceed RD-determined area limits. The property must be located in an eligible rural area, which includes all of Vermont other than Burlington and its surrounding neighborhoods. Applicants must have very low (below 50% of area median income) or low incomes (less than 80% median income). In addition, applicants must be unable to obtain credit elsewhere, yet have an acceptable credit history. Interest payments may be subsidized down to 1%, with subsidies being recaptured when the property is resold. Application is done directly through the local Rural Development office.
- USDA Rural Development Guaranteed Home Loan Program: Similar to the Direct Loan program, but available to households with moderate income (below 115 percent of AMI). Application is completed through an RD-approved lender. Interest is not subsidized.
- USDA Rural Development Repair Loans and Grants Program: Provides loans and grants to very low-income homeowners (below 50% of median income) to repair, improve, modernize, or to remove health and safety hazards in their rural dwellings. Loans are arranged for up to 20 years at one percent interest. Grants may be arranged for recipients who are 62 years of age or older and can be used only to pay for repairs and improvements to remove health and safety hazards.

Loan/grant combinations may be arranged for applicants who can repay part of the cost. The home must be in a rural area as described above.

## **Foreclosure Prevention**

### ***Foreclosure Moratorium***

Chapter 14 of HUD Handbook 4330.1 REV-5, *Administration of Insured Home Mortgages*, requires federally insured mortgagees to initiate a moratorium on foreclosures on property directly affected by a natural disaster for a ninety (90) day period from the date the President declared a disaster to have existed. The moratorium applies to the initiation of foreclosures AND foreclosures already in process.

Subsequent to the foreclosure moratorium, lenders are encouraged to consider alternatives to foreclosure such as pre-foreclosure sales and deeds in lieu of foreclosure if the homeowner is not in a position to “cure” the mortgage delinquency. Refer to Mortgagee Letters 00-5, 02-17, 03-19, and 05-18, for FHA program requirements and incentive payments associated with these servicing approaches.

### ***Forbearance***

In addition to the moratorium, HUD strongly recommends servicing actions for homeowners whose properties were directly affected by the disaster, including special forbearances.

If delinquency may occur, as soon as possible after the disaster, the homeowner should initiate an application for mortgage forbearance. Forbearance may be granted where the home has been damaged or destroyed by a natural disaster or where the homeowner is unemployed due to the disaster. Homeowners are usually not able to initiate a forbearance if they are not current in their payments, thus, in the interim, the homeowner may consult local disaster relief organizations and charities for mortgage assistance. To apply for a forbearance, the homeowner should contact the lender and complete any required paperwork. The homeowner may also be required to submit an affidavit explaining how her financial circumstances will improve by the end of the forbearance period. Forbearances are usually granted for a term of 90 days.

At the end of the forbearance period, the homeowner will be required to repay the amount deferred. Multiple options may be available, including: lump-sum payment of the missed payments; adding the past due amount to the back-end of the mortgage, thereby extending the length of the mortgage until the entire balance is paid off; or increasing the amount of the monthly payment until the past due amount is repaid. The lender will usually send the borrower a forbearance agreement that will include the repayment terms. If not, or if the borrower wishes to obtain an alternative repayment arrangement, the homeowner should immediately submit a letter of intent to the servicer.



### ***Insurance Proceeds***

If a homeowner received a final loss payout from insurance and the check was made out directly to the homeowner, the homeowner can use the funds to cover mortgage payments while making minimal repairs to make the home habitable and code compliant. But in most cases, a check from insurance will be made out to the homeowner and mortgagee. The mortgagee will hold insurance proceeds in excess of \$10,000 in an escrow account, releasing the first \$10,000 when the homeowner is able to submit a repair bills equal to or greater than \$10,000. The remainder of the funds is only released once repairs have been completed. Once all contractors submit paid in full receipts to the lender and release any and all liens, the homeowner must notify the lender that repairs have been completed and the property has been restored to its pre-disaster condition. The mortgage servicer will inspect the property, and if satisfied that repairs have been completed, any remaining balance of the insurance funds in escrow will first be used to pay any arrearage, and then, at the owner's discretion, to pay down the principal or to be sent directly to the homeowner to cover payments going forward (or for whatever she wishes). The homeowner will need to submit a letter of intent to the mortgage servicer indicating how she wishes to have the funds applied.

In some cases, the homeowner may have no intention of repairing the property because it has been rendered uninhabitable or has been condemned, and the homeowner has determined that it is not possible or feasible to make repairs. The homeowner's mortgage deed will likely indicate how insurance funds are to be applied where the home has been condemned after a natural disaster. In most instances, the insurance funds in such a case will be applied to arrearage first and then to reduction of principal. Some lenders leave it to the servicer's discretion. As soon as possible after the disaster, if the homeowner does not intend to make repairs, she should send a letter of intent to the servicer indicating how she wishes the proceeds to be applied, citing to the mortgage deed if appropriate, and providing documentation to prove that the property has been condemned or is uninhabitable. If the homeowner expects to receive additional funding due to the loss of the home at a later date, for instance, because the locality will be purchasing the home at its pre-disaster value through the FEMA Hazard Mitigation Grant Program, the borrower may request that insurance funds be used to cure any arrearage, put in escrow to cover one year's worth of payments, and the remainder to be used to reduce principal. If no additional funding is expected, the homeowner should pursue a deed in lieu.

### ***Other Options***

In addition to the options listed above, homeowners may seek modification of their loan terms, explore refinancing options, or determine that maintaining the home is not financially feasible, and look to a HAFA short sale, traditional short sale, deed in lieu, and so forth.

Many large mortgage servicers are not competent to address the needs of borrowers whose homes have been damaged or destroyed by natural disaster. If your

client's first request for assistance is not immediately satisfied by the lender, both clients and advocates are unlikely to make any headway by continuing to send written requests or spending hours on the telephone with the servicer. Address all correspondence to the Executive Response Center and immediately demand to speak to the Executive Response Center when calling the servicer. If you or your client are unable to get a response from the ERC or to be transferred to the ERC, file a complaint with the Office of the Comptroller of Currency (<http://www.helpwithmybank.gov/>) or with the Vermont Department of Finance at 802-828-3301. Send a copy of your complaint to the mortgage servicer, again addressing the documents to the ERC. It is likely you will be connected to the ERC promptly once your complaint is filed and you may be able to successfully work out a solution for your client.

Even if notice of intent to foreclose has been issued to the homeowner, an appeal to the ERC may generate positive results. Remain in contact with the foreclosure attorney to delay filing of the complaint while you work on resolving the case directly with the lender.

Whether your client obtains a forbearance, modification, or some other form of work-out, obtain an accounting statement from the servicer. Send a formal request for waiver of any and all late fees, inspection or maintenance fees, attorney fees in foreclosure cases, and so forth. And again, if the request is not immediately granted by working through the customer service staff, the next demand letter should be addressed directly to the ERC.

## **IX. CONSUMER PROTECTION ISSUES**

\*\*\* 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 Vermont. In most instances, the matters should be referred to the Vermont Attorney General's Consumer Assistance Program: 800-649-2424. \*\*\*

Disasters are breeding grounds for unscrupulous consumer practices. Disaster victims, particularly senior citizens, lower-income families, disabled people, 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.

After any disaster, four factors typically impact consumers: (1) a desperation to repair any damage and to heal family shock over losses; (2) excessive demand on firms which provide repair services; (3) limitations on the supply of available services because of damage to service providers; and (4) lack of financial resources to make repairs immediately (FEMA funding has yet to be approved or insurance funds have not been disbursed).

### **Verifying the Legitimacy and Trustworthiness of Service Providers**

#### ***Caretaker/Befriender/Relative Scams***

Homeowners with limited resources, who are elderly or disabled, or who have limited English language skills may be victimized by friends, relatives or caretakers. Complicating matters, the scammed homeowner may be unwilling to take legal action against a friend or relative. As such a disaster victim's advocate, you may be able to achieve positive results for your client with a telephone call or letter to the scam artist. In the alternative, a referral to the AG's Consumer Assistance Program may be helpful. CAP staff who find a violation of Vermont's consumer protection laws may send the scam artist a letter explaining the law and advising the scam artist of possible solutions (e.g.: returning your client's money or completing repairs within a certain timeframe).

Children of elderly parents sometimes seek control of their parents' property for their own uses, resulting in a transfer of title or use of a power of attorney to encumber the property. In the event of a presidentially declared disaster, to receive home repair assistance, an applicant must show that she both owns the damaged property and that it is her primary residence. However, an exception is made for cases in which an elderly or disabled person has transferred title but is the expected lifelong occupant of the property. In such a case, your client should apply for FEMA assistance immediately after the disaster to prevent the deed holder from filing and receiving benefits first. Should the deed-holding relative claim to reside in the property and be approved for assistance, the elderly or disabled client's only remaining option would be to report the relative's fraudulent behavior.

If a disaster victim is financially scammed by a caretaker, the issue should also be reported to APS: <http://www.dlp.vermont.gov/protection>.

## **Scams by Home Repair Service Providers**

In a major disaster, it is likely that excess demand and limited supply causes prices for goods and services to increase.

### ***Verifying the Legitimacy and Trustworthiness of a Home Repair Service Provider***

Before contracting for any services, the consumer should attempt to verify the legitimacy and trustworthiness of any business or other service provider. The following represents a non-exclusive list of steps consumers can take to protect themselves:

- Use licensed home repair service providers, if applicable.
  - General contractors are not required to be licensed in Vermont.
  - Plumbers (in most cases) and electricians generally must be licensed: Search licensure records at <https://secure.vtprofessionals.org/renewals/> or call the Vermont Secretary of State at 800-439-8683.
  - If the provider claims to be a corporation, check the Vermont corporate registry: <http://corps.sec.state.vt.us/corpbrow.aspx>.
- Demand proof of insurance.
  - Make sure the contractor carries general liability insurance and workers' compensation.
  - If the contractor is not insured, the homeowner may be liable for accidents that occur on the property, including injuries to the contractor's workers.
- Do some research.
  - Check references. Contractors should be willing to provide the names of previous customers. Call several former customers who had similar work done to make sure they were satisfied with the job.
  - Call the Consumer Assistance Program (800-649-2424) and/or contact the Better Business Bureau (508-652-4800) to inquire about a business before signing a contract.
  - Take a look at Front Porch Forum (free but you are required to register), Google or Yahoo reviews (free, no registration), or Angie's List (fee service).
- Get a written estimate detailing the costs for each particular task to be performed. Compare services and prices before making a final decision. Also, read the fine print. Some contractors charge a fee for a written estimate, which is often applied to the price of subsequent repairs they make. Do not sign any contracts for major repairs until the insurance representative has determined how much damage there is and how much the company will pay.

- Insist on a written contract. A complete contract should clearly state all the tasks to be performed, all associated costs and the payment schedule. Never sign a blank contract or one with blank spaces. Make sure the contract clearly states who will apply for the necessary permits or licenses. Have a lawyer review the contract if substantial costs are involved, and keep a copy for your records.
- Get any guarantees in writing. Any guarantees made by the contractor should be written into the contract. The guarantee should clearly state what is guaranteed, who is responsible for the guarantee and how long the guarantee is valid.
- Obtain a local building permit if required. Permits may be required for site work, other than demolition, and for reconstruction. Contact your local government for permit information.
- Make final payments when the work is completed. Do not sign completion papers or make the final payment until the work is completed to your satisfaction. A reputable contractor will not threaten you or pressure you to sign if the job is not finished properly.
- Pay by check. **Avoid on-the-spot cash payments.** The safest route is to write a check to the contracting company. A reasonable down payment is 30 percent of the total cost of the project, to be paid upon initial delivery of materials. Federal law gives consumers a three-day “cooling off” period for unsolicited door-to-door sales of more than \$25.
- Canceling a contract. This should be done within three business days of signing. Vermont law requires consumers in home solicitation or telephone solicitation sales by given both oral and written notice of their three-day right to cancel.
  - Be sure to follow the procedures for cancellation that are set out in the contract. Send the notification by registered mail with a return receipt to be signed by the contractor.
- Things to watch out for:
  - People should be especially alert for phone or door-to-door solicitors who hand out flyers and promise to speed up the insurance or building permit process, and those who ask for large cash deposits or advance payments in full.
  - Be wary of anyone claiming to be “FEMA certified,” because FEMA does not certify or endorse any contractor.
- **File complaints** with appropriate regulatory agencies if confronted with potential fraud or abuse and contact the AG’s Consumer Assistance Program at 800-649-2424, online at [www.uvm.edu/consumer](http://www.uvm.edu/consumer), or via email at [consumer@uvm.edu](mailto:consumer@uvm.edu). The telephone number for the main Vermont Attorney General’s Office is 802-828-3171.

Consumers are urged to contact the Consumer Assistance Program at 1-800-649-2424 if someone calls with what the consumer feels is a scam - an early alert can prevent others from fraud. Consumers are also urged to contact the local newspaper's consumer desk to notify them of scams.

### ***Price Gouging***

Section 2453 of Title 9, Chapter 63 of the Vermont Statutes Annotated entitled "Consumer Fraud" makes it unlawful to engage in "unfair methods of competition in commerce" or to use "unfair or deceptive acts or practices in commerce." Consumers are urged to contact the Vermont Attorney General's Consumer Assistance Program at 800-649-2424 or 802-656-3183. This statute can be enforced by the Attorney General, by local District Attorneys, or by an action brought privately by a citizen.

### ***Financing Scams***

After a disaster, a homeowner frequently needs major repairs for serious damage. This may include roofing and siding, plumbing, electrical wiring, heating and cooling, replacement of damaged structures, interior living quarters, etc. The cost of these repairs is most likely greater than the insurance coverage and the ability of the homeowner to cover the cost. FEMA will provide some funds for homeowners to repair, replace, or rebuild housing, but the cost is likely to be greater than what FEMA is willing to pay. FEMA grants are not designed to restore property to its pre-disaster condition – they are only meant to make a property habitable. Unscrupulous contractors or salespeople may take advantage of homeowners' desperation, promising to make the repairs at unrealistic prices or using financing schemes that are extremely disadvantageous for the homeowner.

Before looking to financing options, the homeowner should appeal awards issued by FEMA and insurance to obtain more (free) funds. The next best option for many homeowners will be a low-interest loan from the Small Business Administration (SBA) in order to complete repairs or a refinance of the homeowner's mortgage through the SBA.

Financing scams come in a number of forms. In the case of most scams, the salesperson or contractor induces the homeowner to sign a contract secured by the home. The loan repayment amounts are higher than what the consumer can afford to pay on a fixed income, and the contractor is then able to foreclose on the property. Alternatively, the contractor provides inadequate repairs or services and the consumer refuses to pay what is due on his promissory note, again leading to the possibility of foreclosure.

Because of the increased costs of confronting an emergency, consumers who have survived a disaster may fall prey to refinancing schemes in the hopes of keeping up with their credit card payments and mortgage payments. Finance companies may promise to consolidate the homeowner's debt for existing mortgage, credit card debt, car loans and repair loans. But these refinancing schemes often include high processing fees, payments

to bogus/phantom creditors, failure to make timely payments to creditors even where the lender makes timely payments to the financing company, and default on the loan. Following are a few tips for consumers to prevent becoming a victim of one of these schemes:

- Beware of lenders that require a fee in advance of obtaining a loan; advance-fee loans are unlawful in Vermont.
- 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 all of your credit or money problems.
- Always interview several lenders, and check with friends or family for recommendations.
- Research lenders with the Attorney General's Office Consumer Assistance Program – [www.uvm.edu/consumer](http://www.uvm.edu/consumer) or 800-649-2424. Check their complaint history with the Better Business Bureau: [www.vermont.bbb.org](http://www.vermont.bbb.org). Lenders must generally be licensed with the Vermont Department of Financial Regulation; licensure status can be searched online at <http://www.dfr.vermont.gov/banking/verify-license> or by phone at 802-828-3301.
- Never make false statements on a loan application. Any lender who allows this is fraudulent.
- Talk to the local NeighborWorks homeownership center about your options. The centers offer foreclosure counseling and may be able to refer you to low interest financing options. See: <http://www.vthomeownership.org/>.
- If you suspect a violation of any HUD rule or regulations, report it to the local HUD office: 802-951-6290 (tel.); 802-951-6298 (fax); [vt\\_webmanager@hud.gov](mailto:vt_webmanager@hud.gov) (e-mail).

## **Foreclosure Consultant / Equity Purchaser Scams**

Some financial predators prey on persons during the foreclosure process. They claim to be foreclosure experts who offer to assist homeowners after they receive a notice of default. In Vermont, once the finance company files a formal lien with the Town Clerk, the homeowner is deluged by these foreclosure consultants.

Typically, foreclosure consultants are nothing more than financial thieves who further encumber the property with liens for fees and extravagant charges. They try to obtain title through a power of attorney or by direct transfer. They take advantage of the homeowner's distress and offer to purchase the home for below market value through misrepresentations on the value of the home and on encumbrances. They represent to the homeowners that they may stay in the property for the rest of their lives. In fact, after they obtain the property, they sell it and the new owner serves the tenants with eviction papers. Clients should be warned of such scams.

## **X. FINANCIAL AND BANKING MATTERS**

### **Debtor/Creditor**

Often disasters can trigger financial crises as victims fall behind in their bills. Missed payments or collection actions can damage credit ratings. Victims should notify creditors of the situation as soon as possible. Some creditors will agree to postpone payments for a period of time.

#### ***Communicating and Negotiating with Creditors***

If the debtor can afford to make small monthly payments, s/he should contact the collector to ask if the payments are acceptable and reach an agreement on all of the following:

- 1) Total amount owed on the bill, including the interest to be added each year;
- 2) Amount of monthly payments;
- 3) Due dates that payments must reach the collector;
- 4) Address where payments must be mailed; and
- 5) Whether the collector will remove negative information about the bill from the debtor's credit report.

#### ***Documenting Communication between Debtor and Creditors***

It is important for debtors to keep a record of phone calls from the collector regarding the past due bill, including the full names of the individuals s/he speaks with and date, time and details about the conversations. If the debtor arranges a payment agreement, s/he should send a brief letter confirming the terms of the payment plan. The debtor should always keep copies of any letters and payments sent to the collector. Letters to the collector should be sent certified mail. Non-profit consumer credit counseling services may negotiate with collectors on behalf of debtors for little or no fee. See the business listings of the White Pages of the phone book.

#### ***Notifying the Collector of Debtor's Inability to Pay***

Some debtors who have no employment income or prospects for such income might be considered "judgment proof." A "judgment proof" debtor will likely own no real estate, no personal property of significant value, no more than one car, and would probably not have bank accounts or other investments. Such debtors who are unable to arrange a workable payment plan should consider sending the collector a letter informing them of the inability to pay and requesting that the collector stop contacting the debtor about the debt. The debtor should include in the letter any special circumstances which help explain the inability to pay. Sending such a letter limits the collector's right to contact the debtor.



## ***Filing Bankruptcy***

Bankruptcy may become a last resort option for disaster victims who cannot satisfy their creditors. Filing bankruptcy will not necessarily cancel all debts and does not eliminate liens against property. It is recommended that individuals wishing to pursue bankruptcy proceedings be referred to a State Bar-certified lawyer referral service, such as the VBA, where an experienced bankruptcy attorney can be identified. Care should be taken when choosing a bankruptcy attorney and debtors may wish to consider whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field. For information about lawyer referral or assistance for low income debtors, contact:

Vermont Volunteer Lawyers Project	or	The Vermont Bar Association
30 Elmwood Ave.		PO Box 100
Burlington, VT 05401		Montpelier, VT 05601-0100
1-800-639-8857		1-802-223-2020
acourt@lawlinevt.org		dnicholls@vtbar.org
www.lawlinevt.org/vvlp		www.vtbar.org

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

If a disaster victim is either current on his/her home mortgage or prefers to surrender the home and is otherwise having trouble negotiating with their creditors, a Chapter 7 bankruptcy filing may be an option to assist the victim with discharging the bulk of his/her debts. Certain limits on an individual's ability to file a Chapter 7 bankruptcy took effect on October 17, 2005, most notably with respect to whether a debtor is deemed to have the means to be able to pay their debts rather than discharging them. Consultation with an attorney is highly recommended.

General information about filing for bankruptcy relief in Vermont can be found at the Vermont Bankruptcy Court's website under the heading "Bankruptcy Help" at [www.vtb.uscourts.gov](http://www.vtb.uscourts.gov). Other useful information about filing for bankruptcy and the income review can be found at the US Trustee Program's website at [www.justice.gov/ust](http://www.justice.gov/ust).

## ***Credit Reporting***

This area of law is governed by the Federal Fair Credit Reporting Act, 15 U.S.C.A. § 1681, which requires that credit reporting agencies furnish a free copy of a consumer's credit report upon request within 30 days after the consumer is notified of an adverse action. And as a Vermont resident, individuals are also entitled to one free credit

report per year. Credit reporting agencies also have a statutory obligation to investigate consumers' claims.

### ***Home Solicitation Contracts***

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

### **Frequently Asked Questions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We are not aware of any bank that has closed due to the impact of a natural disaster. Consumers can also rely upon the guarantees provided by the FDIC,

which oversees the insurance funds that back deposits in banks and thrifts, and the National Credit Union Share Insurance Fund, which protects credit union depositors. These depositors can rest assured that deposit insurance is in full force.

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

Regulators are telling banks to be understanding during this time of crisis. They have asked banks to work with customers hit hardest by the disaster. Banks are being encouraged to allow some loan payments to be skipped without it counting against credit histories, extend the terms of loans, and to restructure loans to take into account new sets of circumstances. Before skipping payments or changing the terms of the loan, contact your bank. FDIC is encouraging banks to be flexible in this time of crisis, including fees.

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

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

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

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

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

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

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

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

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

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

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

As always, protect your Social Security number, bank account and credit card numbers and other personal information, especially in response to unsolicited requests from strangers. Remember that fraud artists may try to take advantage of the crisis by tricking victims (or their loved ones) into divulging personal information or by stealing sensitive mail or documents from homes and offices.

#### **18. What happens when debtors fail to pay?**

Debtors are not criminally liable for owing debts; however, a collector may file a civil lawsuit against them to collect the debt, and a court judgment will give the collector the right to collect any non-exempt assets. Also, the collector has the right to report the unpaid debt to a credit reporting agency. Auto loan contracts usually permit the collector to repossess a car without advance notice after a borrower's failure to make payments. The debtor will have to pay the full balance of the loan plus all costs of repossession in order to regain possession. If the debtor cannot pay, the collector may sell the car and sue the debtor for the amount the debtor owes over the sale price. If a past due bill is for services a debtor continues to receive (e.g., utilities), the collector may discontinue service or withhold reconnection, even if the debtor moves to another residence. The collector may also sue to try to collect the unpaid balance.

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

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

- **Court-ordered payments**, such as alimony or child support, must be paid on time or jail time could be sought for contempt of court. If clients are unable to pay, do not simply ignore it. Ask the court to modify the payment order. A court will usually lower or eliminate your payments to meet your new financial condition. (Additionally, if you are on SSD, your children should be eligible for "dependents' benefits" which may entirely pay your support obligations. Check with your local Social Security office.)

- **Ongoing services**, such as utilities, telephone service, or health insurance coverage, must be paid or they will lose future service or coverage.
- **Items purchased on credit or pledged as security on a loan** can usually be taken from if payments cannot be made.

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

## 20. **What property is protected?**

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

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

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

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

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

## **XI. ISSUES FOR RENTERS: LANDLORD/TENANT AND HOUSING OPTIONS FOR THE HOMELESS**

Under Vermont law there is no specific statute or code that concerns the rights of tenants and landlords in emergency or disaster situations. However, Title 9 V.S.A. Chapter 137's rules and regulations continue to apply as do Title 12's eviction procedures. After a disaster, regardless of what statutory rights or obligations tenants or landlords may have, the reality may be that both tenant and landlord have suffered significant losses, and neither has any money. Often, landlord and tenant are under such stress that they have lost the ability to communicate effectively with each other, and our role as advocates is to help our client develop a reasonable solution to a situation in which both landlord and tenant are bound to lose.

### **Possible Claims Against a Landlord**

#### *Negligence*

Standard principles of negligence apply. If a landlord is aware of hazards in a property offered for rent and fails to fix them, or if the landlord makes attempts to make repairs but does so without using the appropriate standard of care, the tenant may be able to sue the landlord for injuries he sustains that were proximately caused by the landlord's negligence. If a landlord was unaware of the damage caused by the disaster, liability is unlikely to be found. Similarly, if the landlord was aware of the damage and advised the tenant not to enter the property for safety reasons, the tenant would be likely to be found to have entered at her own risk.

#### *Illegal Eviction*

Tenants are protected from illegal eviction under 9 V.S.A. § 4463. Pursuant to § 4463(b), "[n]o landlord may directly or indirectly deny a tenant access to and possession of the tenant's rented or leased premises, except through proper judicial process."

If a property is condemned or otherwise rendered uninhabitable by the disaster, the tenant there is no illegal eviction because the disaster, not the landlord, is the reason why the tenant does not have access to the leased premises. The tenant is likely to be found eligible for emergency shelter and for rental assistance from FEMA. The tenant should immediately make arrangements with the landlord to remove salvageable possessions from the property and to discard rubbish and destroyed personal property. The landlord will be obliged to return the tenant's security deposit, less any unpaid rent from prior to the disaster, within 14 days of the disaster or the time that the building was declared condemned or uninhabitable.

If the leased premises would be habitable but for the landlord's failure to make basic life safety repairs within a reasonable period of time, the tenant could possibly raise an illegal eviction claim against the landlord. However, the tenant is more likely to

achieve a faster re-entry into the property by requesting the assistance of her local Town Health Officer or an inspector from the Department of Public Safety. The state or local official will be able to advise the landlord of his obligations to make repairs and inform the landlord of a reasonable timeframe for doing so, and will be able to advise the tenant of the degree of hazard from the defective conditions and how long it should take for the landlord to make the rental unit safe. The tenant is likely to be found eligible for emergency shelter and for rental assistance from FEMA.

If a tenant's rental unit was habitable but the landlord forced the tenant out because her own home was uninhabitable due to the flood, the landlord has engaged in an illegal eviction. Pursuant to 44 CFR 206.111, a renter is considered displaced by the disaster where the landlord has taken possession of her dwelling unit because the landlord's primary residence was destroyed, thus, the renter may be eligible for FEMA rental assistance. The tenant could raise a claim against the landlord for the emotional distress associated with the illegal eviction and any out-of-pocket costs.

### ***The Warranty of Habitability***

For a violation of the warranty of habitability to be actionable under 9 V.S.A. § 4457, a tenant must show that there was a defective condition in the rental property that materially affects health and safety, that the landlord had actual notice of the problem, and that the landlord failed to make repairs within a reasonable period of time. Damage from an Act of God constitutes a defective condition, but in order for a tenant to have an actual claim, the damage would have to be more than cosmetic and the tenant would have to show that the landlord failed to make repairs within a reasonable period of time after receiving notice of the problems.

If the damage from the disaster is so severe that it has permanently destroyed the rental unit, the rental agreement between the landlord and tenant is terminated. Similarly, if the damage will take months to repair, the tenant has a strong argument that his rental agreement is terminated. The tenant should provide written notice to the landlord that she is considering her rental agreement terminated due to damage from the disaster, return keys, remove salvageable items and dispose of rubbish, and provide the landlord with a forwarding address for return of her security deposit and pro-rated rent from the month of the disaster. The tenant is likely to be found eligible for FEMA assistance.

If a rental unit is only temporarily uninhabitable, the tenant need not pay rent for the period of time in which she could not stay at the apartment. If the landlord makes repairs rendering the rental unit fit for human habitation within a reasonable period of time, the landlord has not violated the warranty of habitability, and the tenant cannot break his lease. The tenant is likely to be found eligible for rental assistance from FEMA.

If the rental unit is damaged but the tenant is still living there, she should send the landlord notice, in writing, and give verbal notice of the defective conditions present at the property. She can consult with her local Town Health Officer to determine an



appropriate amount of time to make the repairs necessary. While allowing the landlord a reasonable amount of time to make repairs, the tenant must be sure to allow the landlord reasonable access to the dwelling to be able to complete the work. See 9 V.S.A. § 4460. The “reasonable amount of time” to make repairs will depend on the specific facts of the case at hand. If the tenant has no heat in the winter, a landlord will be expected to address that situation within a day or two. If walls have cracked and paint is chipping, the landlord may be afforded a month or so to repair the deteriorated paint and walls.

If the landlord fails to make timely repairs, the tenant or her advocate should send notice to the landlord of the repairs still needed, and indicate what remedies the tenant will put into effect and when. If the landlord still does not make the necessary repairs, and the tenant decides to withhold rent, it is advisable for her to place it in escrow. Once the landlord completes the repairs, if the tenant incurred no damage, she can release the withheld rent monies to the landlord. If the tenant did incur damages, for instance, if she had no water and was forced to purchase her own, drive to a neighboring town to shower at the home of a relative, and so forth, she may want to seek a rent abatement from the landlord for the period of noncompliance.

## **Special Provisions for Tenants in Subsidized Housing**

Any person who was a Section 8 voucher holder or resident of public housing should contact the Housing Authority that manages their project-based section 8 apartment or that has oversight over their Section 8 voucher. The Housing Authority will ensure that the rental unit is brought into compliance with HUD’s Housing Quality Standards promptly. If the unit is uninhabitable while repairs are being made, project-based section 8 dwellers are entitled to have their relocation costs covered by the Housing Authority, and the Authority will pay for their temporary housing expenses. Volunteer attorneys should check the following link: <http://www.hud.gov/offices>.

## **Housing Resources for Homeless Families and Individuals**

### ***Immediately After the Disaster***

Vermont 2-1-1 will be able to make referrals to emergency shelters in the immediate aftermath of a disaster, or to direct callers to the appropriate Disaster Recovery Resource Center. In general, households who are evacuated or who are rendered temporarily rendered homeless are expected to utilize shelter services made available through voluntary agencies rather than renting hotel or motel rooms. FEMA may deny lodging-related expenses where emergency shelter was available as an alternative.

Under new provisions of the Stafford Act, individuals with disabilities and households with pets are supposed to be given appropriate accommodations. Emergency shelter with a pet-friendly option must be provided where emergency shelter has been determined to be necessary in a presidentially declared disaster area. For disabled individuals, accessible accommodations must be arranged.

## ***Short Term and Long Term Replacement Housing***

After registration, a FEMA housing specialist will contact all those who may need temporary housing, generally homeowners with more than \$10,000 in damage and renters whose units are no longer habitable. If needed, FEMA will provide the family with referrals to available rentals in their area. The FEMA housing portal is at: Households may also be able to obtain lists of available rentals at their local Disaster Resource Center.

Vermonters may also call 2-1-1 to learn more about resources that may be available to help with housing. Individuals in counties without a federal individual assistance declaration should also call 2-1-1.

In certain instances, the Vermont State Housing Authority may make subsidized housing or housing payment assistance available to individuals and families affected by a natural disaster. Resources of this sort are likely to be limited, so clients should be encouraged to contact the agency as soon as possible at 802-828-3295 as soon as possible.

Vermonters with disabilities in need of temporary or permanent substitute housing have an additional resource available: the Vermont Center for Independent Living, 1-800-639-1522. People needing accessible housing because of disability can also contact the Vermont State Housing Authority at 802-828-3295 or online at [www.vsha.org](http://www.vsha.org) for a reference to a local housing agency with available housing suitable for persons with disabilities. FEMA has staff dedicated to helping homeseekers with disabilities find new housing to meet their needs.

## **Frequently Asked Questions for Renters**

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

Under Vermont law, you are not required to pay rent if your property is destroyed or so damaged as to render it uninhabitable. Give your landlord notice that you are vacating the apartment. You may move out, stop paying rent, and you are entitled to have your security deposit returned.

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

If the landlord fails to correct the defects in a reasonable period of time, the tenant should contact her local Town Health Officer, the Department of Public Safety, or the Agency of Natural Resources, as applicable. These officials can document the nature of the problems in the dwelling and the degree of hazard, giving notice to the landlord of the conditions and setting a deadline for repairs. If the landlord continues to ignore the poor conditions, the tenant should give the landlord

written notice of her intent to withhold rent, sue for damages, seek an order from the court, or make the repairs herself, and set a date for the landlord to make repairs to avoid the tenant exercising these remedies. Withheld rent should be placed in escrow.

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

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

Once the tenant terminates the lease, the tenant should provide the landlord with written notification of the tenant's new address. The landlord has 14 days to either return the security deposit or provide the tenant with a written list of the damages the landlord claims the tenant is responsible for, including unpaid rent. If the damages and unpaid rent are less than the amount of the security deposit, the landlord must refund the balance to the tenant within the 14 day time period.

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

If you did not have renter's insurance, see if your landlord had insurance to cover your belongings. If your losses are not covered by any insurance policy, you may be able to get help from FEMA's Individuals and Households Program (IHP) grant for replacement of necessary items of personal property. You may apply for these benefits through FEMA at 1-800-621-3362. You may also wish to contact the Red Cross, which may be able to help you.

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

If you had renter's insurance at the time of the disaster, contact your insurance company. If your situation is desperate, make sure you describe your situation to the insurance company; if the company agrees that there is coverage, you can ask for an advance payment to cover a part of your loss. If your insurance company is not responsive, contact the Vermont Department of Banking, Insurance, Securities and Health Care Administration at 802-828-3301, by fax at 802-828-3306 or via email at [www.bischca.state.vt.us](http://www.bischca.state.vt.us). As a supplement to your renter's insurance, or if you did not have renter's insurance, register with FEMA and complete the application process.

**9. What if my landlord isn't fixing problems in the apartment?**

All residential leases in Vermont are subject to an implied warranty of habitability. The warranty of habitability cannot be waived and requires a landlord to keep the leased property in a sanitary, safe and habitable condition. If you believe the warranty of habitability has been breached, notify your landlord by registered mail, return receipt requested, of the defects that need to be fixed. Contact your local Town Health Officer, DPS, and ANR, as applicable. If the landlord fails to correct the defects in a reasonable period of time, contact an attorney.

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

Your landlord must serve you with notice of his intent to terminate your tenancy. The amount of notice your landlord gives you depends on the reason being given for the termination. For instance, if you have not been paying your rent, your landlord is only required to give you 30 days notice. If you do not vacate the rental unit by the termination date specified in the notice, your landlord can file an ejectment proceeding in court. This is the only way to terminate a tenancy where the tenant is unwilling to leave voluntarily. If your landlord does lock you out, you can call the police, and you should consult a lawyer regarding an action for damages.

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

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

**12. 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?**

Apply for Disaster Unemployment Assistance if you became unemployed as a result of the disaster, or if you were unable to work in your self-employment position.

**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 your deadline for filing an answer or appearing in court. Call Vermont Legal Aid at 1-800-889-2047.

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

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. You should be able to get into the property, even if it is uninhabitable, to get your belongings. However, if the property has been condemned and notice barring entry has been posted at the site, special arrangements will have to be made for you to recover your possessions. Contact the number listed on the notice barring entry for assistance. If your landlord is not allowing you to get your belongings even though the property has not been condemned, contact the police and the Disaster Legal Assistance Hotline.

**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 injuries or property damage. However, the law does not prevent suits against the landlord for injuries or property damage resulting from the landlord's negligence. The landlord can therefore be sued if the landlord's negligence caused or contributed to the tenant's injuries or damage from the disaster.

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

If the landlord or seller made an affirmative misrepresentation concerning the possibility of flooding, the tenant or buyer may be able to sue the landlord or seller for fraud to recover for property damages or personal injuries. If you knew, however, that the property could flood or did not rely on the affirmative misrepresentation, then you will not be able to recover damages. If the landlord or seller said nothing about the possibility of flooding, then you will probably not be able to recover any damages. Generally, the mere failure to disclose a fact known by the seller or landlord is not fraud. It is extremely unlikely that a tenant would be able to recover under a Consumer Fraud Claim because of a landlord's failure to disclose that a property was in a flood hazard area. In limited circumstances, a claim might be had if the landlord actively concealed known past flooding (for example, painting over flood water marks on walls) and falsely represented that the property was not in a flood hazard area. See 37 Am. Jur. 2d, Fraud and Deceit, 144-146.

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

No.

## **XII. MONETARY AND OTHER FORMS OF ASSISTANCE**

Many individual towns will start their own funds, foundations, private and non-profit sources of assistance to help specific groups of people impacted by a disaster. The groups could include town residents, mobile home residents, or repairs or aid for certain projects. After Irene, the Vermont Disaster Relief Fund was created to address long term financial needs of Vermonters. The best way to access these funds and to determine client eligibility is for all these funding sources to be available in one place.

### **Vermont 211**

For the most part, Vermont 211 meets this need and can provide callers with referrals and information with one call, or website visit at [vermont211.org](http://vermont211.org). The services available for referrals at 211 fall under the following general categories:

- Basic Needs
- Consumer Services
- Criminal Justice and Legal Services
- Education
- Environment/Public Health/Public Safety
- Health Care
- Income Support and Employment
- Individual and Family Life
- Mental Health and Substance Abuse Services
- Organizational/Community Services
- Referrals to long term recovery case management services
- Tax assistance (VITA Sites)

Types of agencies in the database include:

- Federal, state and local entities
- Community Action Agencies
- Non-Profit organizations
- Churches, service organizations and civic groups that provide services to the public
- Out-of-state entities that offer services to Vermonters

### **Emergency Section 8**

One of the priorities for Section 8 housing vouchers is for those displaced after a disaster. Section 8 typically gets a certain number of vouchers post disaster for people who are low-income and qualify for the program, and who were also displaced due to a disaster.

The emergency Section 8 program is run by the Vermont State Housing Authority at 802-828-3295.

## **Non-Monetary FEMA Resources**

Where the President has declared a federal disaster, individuals and households may seek assistance from FEMA in the form of money, as discussed earlier in this manual, and through a wide range of other services offered by the Agency. These programs are designed to help meet disaster applicants' sustenance, shelter, and medical needs during their path to recovery. They include:

- Mass Care and Emergency Assistance
  - Shelter, feeding, distribution of emergency supplies, evacuation support, reunification of families, locating household pets, specialized needs, coordination of volunteers, functional needs populations.
- Crisis Counseling Services
  - Community based outreach and educational services, assistance for state's mental health providers to offer counseling services to disaster survivors. dealing with the long term effects of the disaster
- Disaster Legal Services (DLS)
  - This is you!

## **Voluntary Agencies**

Not only are the Voluntary Organizations first to provide disaster assistance, they are among the last to stop providing assistance. Examples of voluntary agencies include: the American Red Cross, the Salvation Army, and Catholic Charities. In the event of a presidentially declared disaster, it is likely that Long-Term Recovery Committees (LTRC) will be formed to help address disaster-related unmet needs. The LTRCs coordinate with the FEMA Volunteer Agency Liaison (VAL). Together, they assist with getting donated materials, professional construction services, and address unmet housing needs.



## **XIII. TAX CONSEQUENCES OF A DISASTER**

### **Federal Income Tax**

#### ***Filing Deadlines***

Filing deadlines may be extended for individuals who have suffered losses due to a disaster and/or for individuals in a federally declared disaster area. Check this website to see if extensions are being offered and to whom extensions are being offered: <http://www.irs.gov/uac/Tax-Relief-in-Disaster-Situations>.

#### ***The Casualty Loss Deduction***

Individuals who have suffered losses due to a disaster may deduct casualty losses relating to their home, household items, and vehicles on their federal income tax return. Losses covered by insurance are not deductible unless the tax filer submitted a timely claim for reimbursement from insurance but insurance did not cover the full extent of the loss (the loss must be reduced by the amount of any reimbursement).

Casualty losses are generally deductible in the year the casualty occurred. However, if the tax filer has a casualty loss from a federally declared disaster that occurred in an area warranting public or individual assistance (i.e., FEMA's Individuals and Households Program or FEMA Public Assistance), the filer can choose to treat the loss as having occurred in the year immediately preceding the tax year in which the disaster happened. If the tax filer does not have access to all information needed to file a casualty loss deduction, she may opt to amend her tax return later.

#### ***Assistance for Tax Filers***

Tax filing for individuals who have incurred extensive losses can be extremely complicated. The Vermont Society of Certified Public Accountants (<http://www.vtcpa.org/>) has developed detailed manual for tax preparers assisting disaster victims. The association may offer free or low cost tax assistance to disaster victims. Refer to the VBA website or the VTCPA website for more information.

### **Property Taxes**

#### ***Property Tax Abatements***

Property tax abatements, in whole or in part, can be a good remedy for clients who have properties that were lost or significantly destroyed in a disaster. This can apply to both homeowners of stick structures and mobile homes. All towns are bound by Vermont statute for abatements but every town in Vermont has some unique ways of handling tax abatement hearings. The abatement statute is 24 V.S.A. § 1535 is below and provides (bolded sections are particularly relevant to clients post-disaster):

a) The board may abate in whole or part taxes, interest, and collection fees, other than those arising out of a corrected classification of homestead or nonresidential property, accruing to the town in the following cases:

- (1) taxes of persons who have died insolvent;
- (2) taxes of persons who have removed from the state;
- (3) taxes of persons who are unable to pay their taxes, interest, and collection fees;
- (4) taxes in which there is manifest error or a mistake of the listers;
- (5) taxes upon real or personal property lost or destroyed during the tax year;
- (6) the exemption amount available under 32 V.S.A. § 3802(11) to persons otherwise eligible for exemption who file a claim on or after May 1 but before October 1 due to the claimant's sickness or disability or other good cause as determined by the board of abatement; but that exemption amount shall be reduced by 20 percent of the total exemption for each month or portion of a month the claim is late filed.
- (7), (8) [Repealed.]
- (9) taxes upon a mobile home moved from the town during the tax year as a result of a change in use of the mobile home park land or parts thereof, or closure of the mobile home park in which the mobile home was sited, pursuant to 10 V.S.A. § 6237.

(b) The board's abatement of an amount of tax shall automatically abate any uncollected interest and fees relating to that amount.

(c) The board shall, in any case in which it abates taxes, interest, or collection fees accruing to the town, or denies an application for abatement, state in detail in writing the reasons for its decision.

(d) The board may order that any abatement as to an amount or amounts already paid be in the form of a refund or in the form of a credit against the tax for the next ensuing tax year, and for succeeding tax years if required to use up the amount of the credit. Whenever a municipality votes to collect interest on overdue taxes pursuant to 32 V.S.A. § 5136, interest in a like amount shall be paid by the municipality to any person for whom an abatement has been ordered. Interest on taxes paid and subsequently abated shall accrue from the date payment was due or made, whichever is later. However, abatements issued pursuant to subdivision (a)(5) of this section need not include the payment of interest. When a refund has

been ordered, the board shall draw an order on the town treasurer for such payment.

An abatement request should be made in writing and submitted to the town clerk. There is a hearing before the town abatement board to decide whether or not to grant the abatement, and the rules for the composition of the abatement board can be found at 24 V.S.A. § 1533. It is not always necessary for the client, or their representative to attend the abatement hearing. After some disasters, towns with many impacted residents grant abatements without much contest. However, if the abatement is likely to be contested, it is preferable to attend the hearing in addition to submitting the abatement request and any relevant documentation. The documentation can include proof that the property is condemned, proof of the client's income or other relevant information. See the appendix for some examples of tax abatement request letters. Abatement hearings are typically held at least quarterly, but some towns meet more frequently. If it is unclear how a town conducts its tax abatement hearings, contact the town clerk for more information.

### ***Town Property Tax Assessments***

If a town has incorrectly assessed a property value for property tax purposes, there is typically an appeal process outlined in the assessment, which can vary town by town. This is useful when a town keeps a property value the same or increases it, even though there was damage to the property that lowered the property's value. The taxpayer appears either before the assessor, and/or the listers, and has a chance to contest the assessed property value. There can be an informal hearing that can be followed by a more formal hearing with the listers if the informal hearing does not resolve the matter. Evidence is not necessary, but can help illustrate the error of the assessment. Evidence can include photos, contractor assessment, information from a realtor in the area, etc.

## **XIV. LABOR AND EMPLOYMENT**

### **Introduction**

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

### **Disaster Unemployment Assistance**

Disaster Unemployment Assistance (DUA) provides payment of unemployment assistance benefits to unemployed individuals whose unemployment is caused by a major disaster. It also provides reemployment assistance where the individual's position has been permanently eliminated because of the disaster. DUA benefits are described in Sections 410 and 423 of the Stafford Act, and implementing regulations can be found in 20 CFR Part 625. The Act and its implementing regulations "shall be construed liberally" so as to meet the needs of people who have lost their employment due to a disaster. 20 CFR 625.1(b). DUA is not managed by FEMA. Rather, it is a program paid for and administered by the Vermont Department of Labor (VDOL) in accordance with regulations and procedures prescribed by the Secretary of Labor of the United States.

#### ***The Disaster Assistance Period and Deadlines***

Whenever a presidential disaster area is declared, VDOL is required to promptly announce throughout the disaster area by all forms of news media that individuals who are unemployed as the result of the disaster may be entitled to DUA. In addition to providing notice of the availability of DUA, VDOL is also responsible for notifying the public that they should file applications as soon as possible, but not later than the 30th day after the DUA announcement date, and where and how to file the DUA application.

After Irene, unfortunately, news about DUA did not reach many people who may have been eligible for the benefit, and for those who did receive such notice, the application process was difficult to navigate and regularly mismanaged by VDOL. More than 30 days after the disaster, less than 10% of applicants had been approved and begun to receive benefits.

#### ***Eligibility Requirements for DUA***

DUA benefits become available after a presidential disaster area has been declared and the Vermont Department of Labor (VDOL) and the Secretary of Labor have entered into an agreement to provide DUA benefits. Both unemployed workers and self-

employed individuals are eligible for DUA benefits so long as the unemployment is caused by the disaster.

To be eligible for a DUA payment, an applicant must satisfy the following conditions:

1. The week must begin during a Disaster Assistance Period, i.e., after the presidential disaster declaration has been issued;
2. the individual is unemployed (including those who are self-employed but not working);
3. the person is unemployed because of the disaster (see below for details);
4. the individual has timely filed an initial application for DUA (within 30 days of the date DUA benefits are made available) and a timely application for payment of DUA for that week (see application information below);
5. the applicant is able and available to work under the terms of Vermont law, or is unable to work because of injury sustained during the disaster;
6. the person has not refused a bona fide offer of employment or refused to resume self-employment;
7. the person was not under a disqualification for regular Unemployment Compensation for a cause that occurred prior to the disaster, or for any other reason is ineligible for compensation (e.g., failing to provide documentation of income, etc.).

A person is considered to be unemployed because of the disaster if the unemployment was directly caused by the disaster, rather than through a chain reaction initiated by the disaster. 20 CFR 625.5 describes this causal connection as follows:

- for an unemployed worker:
  - the person cannot work as a direct result of the major disaster, i.e., physical damage or destruction of the place of employment, physical inaccessibility of the place of employment, or lack of work at the place of employment because the employer's source of revenue was damaged or destroyed or closed by federal or state officials;
  - the individual is unable to reach the place of employment (e.g., roads are impassable) because of the disaster;
  - the applicant was to commence employment on a particular date but was unable to do so for one of the reasons described above;
  - the head of the household has died in the disaster and the unemployed person has thereby become the breadwinner or major support for the household; or
  - the person cannot work because of injury sustained in the disaster.
- for a self-employed individual who cannot work:
  - the person cannot work as a direct result of the major disaster (see above for definition of "direct result");

- the applicant cannot reach the place where her services as a self-employed individual are performed;
- the individual cannot commence self-employment as scheduled because of one of the reasons described above; or
- the individual cannot perform services as a self-employed individual due to injuries sustained in the disaster.

### ***The Application Process***

To be eligible for DUA benefits, an unemployed person must be ineligible for regular unemployment compensation benefits. Thus, the applicant must first apply for and be denied regular UC. To apply for UC, the applicant must call the VDOL Claims Center at 1-877-214-3330 weekdays between 8:30 and 4. A Customer Service Representative will gather the following information:

- Social Security Number
- Mailing address and home address
- Telephone number
- Alien Registration Number (if not a U.S. citizen)
- Amount and duration of any pay received during the time the applicant was unable to work.
- Return to work date, if applicable.
- Driver's license number (or state-issued ID number)
- Banking information for direct deposit
- Name and address of employer (including payroll address, if different from employer address)
- Employer telephone number
- Beginning date of employment and end date of employment (or the exact dates for days of work missed because of the disaster)
- Explanation of reason for unemployment, specifically addressing how it was disaster-related (see eligibility requirements section).

As soon as the applicant indicates that he is unemployed due to natural disaster, the VDOL representative should explain that the applicant may be eligible for DUA and that a DUA application will be sent to the applicant along with a notice denying UC benefits. DUA regulations require an initial application for DUA to be filed within 30 days after the announcement date of the major disaster. See 20 CFR 625.8.

Applicants are expected to file their claim for UC during their first week of unemployment, but as noted above, DUA regulations allow applicants up to 30 days to file for assistance. In a major disaster situation, it is likely that many eligible claimants will not file for UC during their first week of unemployment due to more pressing concerns, like homelessness or injury. Nonetheless, VDOL may require the applicant to submit a letter of explanation as to why she applied late. The applicant should cite 20 CFR 625.8, explaining that DUA applications are timely within the first 30 days after the disaster declaration. If the applicant filed after 30 days of the disaster declaration, he will

have to explain why he was unable to file earlier. No applications will be accepted once the disaster assistance period is over.

After establishing her claim, the applicant is required to file weekly claims in order to receive benefits. “Establishing a claim” refers to the applicant’s initial call to VDOL. Even if the applicant has not yet received the DUA application or received notice of approval for DUA, she must file a claim on a weekly basis. The weekly claim period is from midnight on Sunday through to 11:59 P.M. on the following Saturday. The applicant files her weekly claim on the first Sunday or Monday after her initial call to VDOL to apply for benefits for unemployment during the preceding week. When filing for the first time, the applicant will be required to establish a PIN which she will use each time she files a claim. Every week of unemployment thereafter, the applicant must file her claim sometime between Sunday at 12:01 A.M. and 4:30 P.M. on the following Friday. Claims are filed online at [www.labor.vermont.gov](http://www.labor.vermont.gov) and clicking on Unemployment Insurance Claimant Application or by calling 1-800-983-2300 and selecting option #1.

When filing the DUA application, if the applicant does not have documentation substantiating employment or self-employment wages or earnings, the applicant can make a statement attesting to her income in place of such documentation. VDOL must make an immediate determination of eligibility even if the applicant cannot provide normal documentation of income. The applicant has 21 days to follow up with VDOL by providing documentation of self-employment and wage income. If the applicant fails to do so, she shall be found ineligible for all benefits, including those already received. VDOL will consider whether the individual should then be subject to disqualification for fraud.

### ***Amount and Duration of DUA Assistance***

The amount of the DUA benefit paid to an eligible unemployed worker or eligible unemployed self-employed person shall be the weekly amount of compensation the individual would have been paid as regular compensation, but no more than the maximum amount of regular UC in Vermont for a one week period. When computing the amount of qualifying employment and wages, Vermont law is used, except that self-employment income is treated in the same manner as wages. Self-employment income to be treated as wages is the net income reported on the applicant’s tax return as income from all self-employment dependent on the individual’s own labor. If the weekly amount computed based on the applicant’s wage income of self-employment income is less than 50% of the average weekly payment of regular UC in Vermont, the individual will be entitled to a DUA benefit equal to the 50% of the average weekly payment of regular UC.

DUA benefits payable to an individual for a week of unemployment will be reduced by any of the following that the individual received or would have received had the individual filed for the benefit:

- benefits or insurance for loss of wages due to illness or disability

- supplemental unemployment benefits pursuant to a collective bargaining agreement
- private income protection insurance
- SSA, pension, or annuity income that is deducted from the applicant's regular compensation
- workers' compensation benefits

DUA benefits are available to eligible unemployed workers or unemployed self-employed individuals for all weeks of unemployment which begin during a Disaster Assistance Period. The Disaster Assistance Period ends no later than the 26th week subsequent to the date the major disaster was declared. See 20 CFR 625.2.

### ***Appeal Procedure***

Applicants may appeal their benefit amount through the normal UC appeal process, involving a hearing before an ALJ, in accordance with applicable VDOL procedures, except that the period for appealing is 60 days from the date of VDOL's eligibility determination. The ALJ's decision must be issued within 30 days after receipt of the appeal by the State. Unlike regular UC, if dissatisfied with the decision of the ALJ, the applicant must request review by the federal Department of Labor Regional Administrator. The ALF decision shall contain information on how to seek such review. The review must be requested within 15 days after the applicant received notice of the ALJ decision or the date the decision was mailed, whichever comes first. Regional Administrator decisions are final. See 20 CFR 625.10 for further details.

## **General Employment Issues: Frequently Asked Questions**

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

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

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



An employer may choose to continue its health benefit program in the aftermath of a disaster. In such a case the employer will need to make arrangements with employees for payment of any applicable employee contributions. The termination of an employment or reduction in hours of work could also trigger the elimination of group health insurance coverage for covered employees and dependents. This would obligate the employer to send notices to the affected employees advising them of their right to continued health plan coverage pursuant to a federal statute commonly known as “COBRA.” In the usual case, COBRA permits the ex-employee to continue the same coverage the employee had while employed for up to 18 months. The ex-employee is responsible for 102% of the premium for the coverage. If the employer terminates its health plan completely, COBRA coverage will end. For more information, consult the U.S. Department of Labor website ([www.dol.gov/ebsa](http://www.dol.gov/ebsa)).

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

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

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

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

However, an employer may not discriminate against any employee by taking an adverse employment action on the basis of the employee's race, sex, age, religion, color, national origin, or disability. The State of Vermont also prohibits discrimination on the basis of sexual orientation.

**5. Are there exceptions to Vermont’s employment-at-will doctrine?**

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

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

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

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

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

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

### **Workers' Compensation Issues**

If a worker sustains a job injury or a work-related illness, the Vermont Workers' Compensation Act (Act) provides for medical expenses and, in the event the employee is unable to work, wage-loss compensation benefits until she is able to go back to work. Additionally, death benefits for work-related deaths are paid to dependent survivors. No compensation shall be paid when an injury or death is intentionally self-inflicted, or is caused by an employee's violation of the law including, but not limited to, the illegal use of drugs. An injury or death caused by intoxication also may not be covered.

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

Additional information regarding workers' compensation benefits can be obtained online at [www.labor.vermont.gov](http://www.labor.vermont.gov) and use the Quick Link to "Businesses" then "Workers' Compensation.") or through the following:

E-mail: [kristina.bielenberg@state.vt.us](mailto:kristina.bielenberg@state.vt.us) (Supervisor)  
Phone: 1-802-828-2990

Or

Workers' Compensation & Safety Division  
5 Green Mountain Drive, P.O. Box 488  
Montpelier, VT 05601-0488

### *Frequently Asked Questions*

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

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

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

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

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

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

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

Same as #3.

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

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

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

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

## **XV. PUBLIC BENEFITS**

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

### **Introduction**

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

Vermont has cash assistance programs for children and their parents, to help them meet their basic needs through programs such as 3SquaresVT (food stamps), Essential Person, Fuel Assistance, and Reach Up. These programs are administered by the Vermont Agency of Human Services' Department for Children and Families (DCF), Economic Services Division. When applying for one of these programs, the applicant is screened for eligibility for all programs and may acquire additional benefits.

To find the DCF District office nearest your client, call 1-800-479-6151. Applicants may also apply online at [www.mybenefits.vt.gov](http://www.mybenefits.vt.gov). To speak to a staff member, call 1-800-479-6171, and press 4.

### **Programs**

#### ***Reach Up***

This is the program formerly known as welfare, ANFC, or in other states as TANF. Eligible low income families with minor children (age 21 and younger) can receive a monthly cash benefit. The amount of the benefit depends on family income, housing costs, and household size. DCF has programs within Reach Up called Reach Ahead and Reach First benefits, designed to meet the ongoing emergency or non-emergency need of eligible families. Even working families may be eligible for assistance since RU has many earned income disregards, so low income families should be encouraged to apply, particularly in the aftermath of a disaster. Even a small Reach Up benefit may make the family members eligible for free health insurance in the form of Medicaid. Further, eligible families may also be able to receive assistance to pay for car repairs, car insurance payments, and other support services.

Cash benefits are minimal and income and asset limits are extremely low. The maximum benefit for a household of 3 as of September 2012 is approximately \$ 665.00 per month. Reach Up benefits are income and asset sensitive. Resources (assets) above \$1,000 will make a family ineligible. Income above the maximum benefit amount will

usually make a family ineligible for the program. In addition to providing ongoing monthly benefits, Reach Up can help with one-time needs such as work- or school-related expenses like books, class fees, car repairs, and necessary clothes.

Lump sums received while on RU benefits can disqualify families into the future and create large overpayments. Families should always get legal advice if they know they will receive a lump sum (insurance settlement, inheritance, etc.). Earned Income Tax Credits, income tax refunds and FEMA assistance exempt lump sums.

Beneficiaries with sanctions and problems with their Reach Up workers should receive legal advice. (See Fraud Section below).

### ***3SquaresVT***

3SquaresVT is the name for Vermont's food stamp program. 3SquaresVT helps low income individuals and families buy food. Each month the Economic Services Division of the Department for Children and Families deposits money into a debit card, known as an EBT card or Vermont Express Card, that is accepted at most Vermont grocery, convenience stores, and some Farmers' markets to pay for food. Individuals age 65 or over or who receive Supplemental Security Income (SSI) can receive a cash benefit deposited into their bank account instead.

Benefit amounts vary based on household size and income. Benefits amounts depend on the household's income, housing expenses, and whether or not their heat is included in their rent. Disabled Vermonters and seniors (age 60 and over) benefits can be increased based on their payment of out-of-pocket medical expenses. Benefit amounts are rather low: a family of 5 with no or low income can receive a maximum amount of \$793.00 per month as of September 2012. An individual, for instance, may be eligible if his monthly income is less than \$150 and he has less than \$100 at the time he applies, or if his monthly rent is more than his income. Note that migrant or seasonal farm worker households may be eligible for Reach Up even if they are ineligible for cash assistance programs.

3SquaresVT has many rules and many exceptions to rules. For more information, the following website is an excellent resource, and includes a useful online calculator: <http://www.vermontfoodhelp.com/info/index.php>. If applicants are not eligible due to income or resources, referrals to Hunger Free Vermont can help them find other Vermont Food programs. See: <http://www.hungerfreevt.org/> or 802-865-0255.

Application processing has seen significant delays since the summer of 2010 due to "modernization," and in the aftermath of a disaster, DCF has experienced long delays in application processing and has often lost application forms or materials. Contact the DCF Ombudsman at [Lena.Hemenway@ahs.state.vt.us](mailto:Lena.Hemenway@ahs.state.vt.us) or 802-279-4026 to assist with delays.

### *Seasonal Fuel Assistance*

The Low Income Home Energy Assistance Program (LIHEAP), funded by the federal government, is designed to help low income individuals and families pay their heating bills. Benefits assist with payments for propane, gas, electric, and wood heat.

Benefit amounts are determined once annually and based on the number of people in household, number of bedrooms, type of heat, and the household's income. Grant amounts have decreased in recent years due to reductions in federal funding for the program (e.g., for the heat season of 2011/12, benefits decreased 50%). The median amount was about \$200 in 2011/2012.

Applications are process from July through last day of February, and benefits are issued in winter months from November through March. Recently, DCF modernization has implemented year long application process.

Where a household finds itself without adequate heat in an emergency, they may also access the emergency Crisis Fuel Program at their local Community Action office. Crisis Fuel has a higher income limit than the Seasonal Fuel Assistance Program, so even if denied for SF, families without heat should be encouraged to apply for CF. For more information, see [http://dcf.vermont.gov/esd/fuel\\_assistance/crisis\\_assistance](http://dcf.vermont.gov/esd/fuel_assistance/crisis_assistance).

Denials for Seasonal or Crisis Fuel Assistance are reviewed by the Seasonal Fuel Chief. If unresolved after review by the Chief, the applicant may go through the Human Service Board appeal process.

### **WIC**

WIC is the Special Supplemental Nutrition Program for Women, Infants, and Children. It is a 100% federally funded program that provides nutritious food (via vouchers), individual counseling, breastfeeding promotion and support, and referrals to health care. Unlike 3SquaresVT benefits, WIC vouchers may only be used to purchase particular types of foods, for instance, to buy Cheerios, but not Fruit Loops cereals. The purpose of the WIC Program is to prevent poor birth outcomes, reduce infant mortality rates and low birth weights, and to improve the nutrition and health of infants and their mothers.

WIC is provided in addition to 3SquaresVT and other food programs. The following individuals may also qualify for WIC coupons:

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

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

To apply, contact the Vermont Department of Health toll free number for the WIC program at 1-800-649-4357. Also see [www.healthvermont.gov/wic](http://www.healthvermont.gov/wic).

### **Frequently Asked Questions**

#### **1. Can I use WIC if I decide to stay with friends or family in another state?**

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

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

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

### **Appeal Denial of DCF Benefits or the Amount of DCF Benefits**

Applicants have the right to appeal any decision by DCF. Appeals must be requested within 90 days of the DCF decision. To request an appeal, the applicant should tell the DCF worker in writing or orally that he or she wants a Fair Hearing. If requesting a Fair Hearing orally, it's a good idea to repeat the request in writing. All Fair Hearings are handled by someone outside of DCF. The decisionmakers have the power to overturn DCF decisions and to provide the appropriate DCF-administered benefits. It is almost always worth appealing.

Where a family has applied for Emergency Assistance or an individual has applied for General Assistance (due to homelessness), applicants have the right to an expedited hearing. Such an expedited appeal must be decided within 10 days and is often decided the same day. See PP&D Memos facing 2800 and 2600. In some cases, if a

Hearing Officer cannot be found and it's a Friday, homeless families or individuals can be housed through the weekend and have the expedited Fair Hearing the following Monday.

## **Requesting Replacement Benefits**

Current 3SquaresVT households who lose food due to a natural disaster may be eligible for replacement benefits. To report food lost and request a replacement benefits, 3SquaresVT recipients should call 1-800-479-6151 or go to their local DCF District office as soon as possible, as it is likely that the deadline to request replacement benefits will be within two weeks of the disaster. Only those households who experience a loss and report that loss will receive replacement benefits.

## **Economic Services Division District Offices**

### **BARRE**

5 Perry Street, Suite 150  
Barre, VT 05641-4270  
1-800-479-6151

### **MORRISVILLE**

63 Professional Drive  
Morrisville, VT 05661  
1-800-479-6151

### **BENNINGTON**

200 Veteran's Memorial Drive, Suite 6  
Bennington, VT 05201-1929  
1-800-479-6151

### **NEWPORT**

100 Main Street, Suite 240  
Newport, VT 05855  
1-800-479-6151

### **BRATTLEBORO**

322 Main Street, PO Box 70  
Brattleboro, VT 05302  
1-800-479-6151

### **RUTLAND**

320 Asa Bloomer Building  
Rutland, VT 05701  
1-800-479-6151

### **BURLINGTON**

119 Pearl Street  
John Zampieri State Office Building  
Burlington, VT 05401-4334  
1-800-479-6151

### **SPRINGFIELD**

100 Mineral Street, Suite 201  
Springfield, VT 05156  
1-800-479-6151

### **HARTFORD**

224 Holiday Drive, Suite A  
White River Junction, VT 05001-2097  
1-800-479-6151

### **ST. ALBANS**

20 Houghton Street, Room 313  
St. Albans, VT 05478  
1-800-479-6151 3

### **MIDDLEBURY**

156 South Village Green, Suite 201  
Middlebury, VT 05753  
1-800-479-6151

### **ST. JOHNSBURY**

67 Eastern Avenue, Suite 7  
St. Johnsbury, VT 05819  
1-800-479-6151

## **A Note about Fraud**



If an applicant for benefits fails to report income, a household member, or fails to provide other information needed to calculate benefits to the Department, this could be an intentional program violation. Violations can result in a disqualification of a household member for a year for a first offense. Intentional program violations require the Department to show that the applicant intentionally violated rules by not disclosing information, which can result in an overpayment of benefits to be repaid. Clients do not have to sign the disqualification waiver if they dispute the facts. After a disaster, documentation gets lost in the mail or phone lines go down, so what appears to the Department as an intentional violation can instead be inadvertent household error, or Department error.

Advocates and attorneys should first try to resolve the problem with the fraud investigator and request to see their evidence. If it cannot be resolved at that level, the client can accept the waiver for a year, or request a disqualification hearing before a hearing officer.

The best way to avoid an accusation of fraud is to document all correspondence, including a log of telephone calls or attempted calls, and to keep copies of everything mailed in, along with fax confirmation sheets, certified mail receipts and emails. Client testimony is accepted if this documentation is not available, but proof that an applicant did what was required is the fastest way to clear up an erroneous fraud case.

## **XVI. SOCIAL SECURITY BENEFITS**

Social Security is composed of two separate entities: SSI, which provides benefits for aged, blind, and disabled people without regard to prior workforce participation, and SSD, for disabled persons who have been in the workforce.

### **Ongoing Monthly Payments**

In the event of a disaster, the Social Security Administration will undertake efforts to ensure that all Social Security benefit checks are received by any affected beneficiaries.

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

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

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

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

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

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

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

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

#### ***Individuals Eligible for Survivor Benefits or Workers with 40+ Earnings Credits***

- A widow/widower-full benefits at 65 years of age, or reduced benefits as early as age 60. A disabled widow/widower may receive benefits as early as age 50.
  - Remarriage: In general, a widow/widower cannot receive benefits if they remarry before the age of 60 (50 if disabled) unless the latter marriage ends, whether by death, divorce, or annulment. However, remarriage after age 60 (50 if disabled) will not prevent payments on a former spouse's record.
- A widow/widower at any age, if he or she takes care of the deceased's child. The child must be either under age 16 or disabled and receiving Social Security benefits.
- Unmarried children under 18, or up to age 19 if they are attending elementary or secondary school full time.
  - Note: A child can receive benefits at any age if he or she was disabled before age 22 and remains disabled. Under certain circumstances, benefits can also be paid to stepchildren, grandchildren, or adopted children.
- Dependent parents (i.e., receiving at least ½ of their support from the deceased worker) age 62 or older who are not entitled to other Social Security benefits equal to or larger than the amount of the survivor's benefits and who have not remarried since the worker died. The parent must either be the natural parent or have legally adopted or become the stepparent of the deceased worker before the worker turned 16.
- A former spouse can receive benefits under the same circumstances as a widow/widower if the marriage lasted 10 years or more.

### ***Benefit Amount***

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

- Widow or widower full retirement age 65 or older: 100 %.
- Widow or widower age 60 to 64: About 71 – 94%.
- Widow or widower at any age with a child under age 16: 75%.
- Children: 75%.

### ***Applying for Benefits***

To file for benefits, the applicant should call 1-800-772-1213 and ask for an appointment. A person can qualify for widow's or widower's benefits if he or she was

married to the deceased worker for at least nine months just before the worker died. (A surviving divorced spouse must have been married to the worker for 10 years immediately before the date the final divorce became effective.) If the insured worker's death was caused by the disaster, the 9-month requirement is likely to be waived.

### ***Social Security Death Benefit***

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

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

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

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

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

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

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

For disability applications, the process can stretch out over a couple of years. Destitute applicants should be referred to the welfare office for cash aid and/or 3SquaresVT while the application is pending. There is also a process whereby the hearing on the claim can be expedited. One must show “dire” circumstances such as homelessness, etc.

### **SSI Emergency Advance Payments**

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

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

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

## **XVII. FAMILY LAW ISSUES**

This section addresses some frequently asked questions related to family law that may arise in the aftermath of a disaster. Also note that many useful forms can be found at <http://www.vermontjudiciary.org>.

### **How do I modify child support and when should I seek a modification?**

Child support ordered by the court can be changed by the court if one parent can show there has been a real, substantial and unanticipated change of circumstances since the last child support order was issued. Therefore, if someone loses a job or their income is decreased due to disaster, this may constitute a real, substantial, unanticipated change in circumstances sufficient to be entitled to a modification of child support.

Parties may qualify for the assistance of the Office of Child Support to assist them with modification or enforcement of child support.

OCS child support helpline: 1-800-786-3214  
[http://dcf.vermont.gov/child\\_support](http://dcf.vermont.gov/child_support)

Under the statutes, change is considered real and substantial if it would make the child support amount payable under the child support guidelines at least 10% higher or lower than the amount of the current child support order. Involuntary loss of employment, even when one is receiving unemployment compensation, worker's compensation, or disability benefits, is a good reason to review the guideline support and if there is a 10% change then to seek a modification of child support.

Changes in the parenting schedule may also be a reason to seek a modification if that change in schedule impacts the guideline by the necessary 10%. You should go to the department of children and families website for access to the child support guideline calculator at: [http://dcf.vermont.gov/ocs/parents/guidelines\\_calculator](http://dcf.vermont.gov/ocs/parents/guidelines_calculator)

In order to start the modification process, a party must file a Motion to Modify Child Support. The forms can be found at the judiciary website: <http://www.vermontjudiciary.org> or by going to your local court clerk's office at the Family Division and asking for Form #803. The motion should also be accompanied by an affidavit explaining the change. This form is 804. The party should also complete the Form 813 Affidavit of Financial Affidavit part A and sometimes part B. There is a filing fee and usually a service fee as well so you should ask the clerk the amount at the time of filing. Some individuals may not be able to afford the fee and may request waiver or reduction of the fee by filing Form 228c "In forma pauperis."

Note that all modifications of child support must be approved by the court which means that even where parties have informal agreements, those agreements should be immediately reduced to writing and filed as a stipulation with the court asking for the court to approve it. Even if there is an informal agreement, the change of support does

not legally take effect until it is ordered by the court. This is where a word of caution is further warranted. If there is no modified order approved by the court, the party who benefitted from the informal modification can later be ordered to conform to the existing unmodified order so it is vitally important to modify any child support order if there is an intention to pay an amount different than the current order.

The court cannot make the modification effective before the filing date of the Motion so be sure to file.

### **How do I enforce child support?**

A Child Support Order is effective and can be enforced by the court until modified. If a party is not paying support according to the Order, the Order may be enforced. If wages are not already being withheld, you can ask the court to order wage withholding if support is seven days or more late. You may use the judiciary website forms or contact the clerk of your county for a Motion to Enforce Child Support. Form #823. Please be sure to include an Affidavit of how much is past due. The Office of Child Support may be contacted for assistance at 1-800-786-3214.

<http://dcf.vermont.gov/ocs/> The Office of Child Support has a number of ways to assist, including tax intercept.

### **How do I modify parental rights and when do I file for modification?**

An Order of Parental Rights and Responsibilities and Parent-Child Contact can be changed by the court. Without agreement by the parties, a filing party must show a real, substantial, unanticipated change in circumstances to meet the burden of review. If this standard is met, the court will then review the best interests factors. Request Form 843 or find it on the judiciary website. Please be sure to outline the real, substantial and unanticipated change in circumstances that has occurred since the current order was issued in an affidavit.

If the parties agree to a modification, they can write up their agreement and file it with the court asking that it be reviewed and accepted as the revised agreement. Parties may wish to work with a mediator to assist them with this discussion, and/or the case manager at the court can be a good source to assist the parties with getting their agreement down in writing or having the conversation.

# **XVIII. MEDICAL AND MENTAL HEALTH ISSUES**

## **Introduction**

The State of Vermont has a variety of resources available for individuals and families to obtain medical care. See this site for more information: <http://www.greenmountaincare.org/vermont-health-insurance-plans>. Vermont's programs are not only available in the event of a disaster, but also for those having difficulty affording medical care due to situations unrelated to a disaster. Certain requirements for obtaining government benefits, such as proof of income or social security number, could possibly be waived depending on the nature and severity of a particular disaster. In addition, the following organizations may be able to provide various types of assistance following a disaster:

American Red Cross – 802-786-2189 – Rutland area  
VT Health Dept. 800-464-4343 [www.healthvermont.gov](http://www.healthvermont.gov)  
VT Health Dept. Rutland area – 888-253-8802

## **Frequently Asked Questions**

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

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

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

You and your family may be able to qualify for publicly funded health programs. Vermont offers Medicaid for low-income families. Green Mountain Care provides health insurance for individuals and families who do not qualify for Medicaid. The Dr. Dinosaur Program provides free or low-cost health care coverage for children. You can apply for Medicaid and Dr. Dinosaur at [www.greenmountaincare.org](http://www.greenmountaincare.org). You may also obtain information regarding Medicaid and have an application sent to you by calling 1-800-250-8427. To obtain information and apply for Green Mountain Care programs call 1-800-250-8427 to obtain information and applications.

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

Services provided outside Vermont may or may not be covered. For Medicaid, out-of-state medical providers must enroll with Vermont's Medicaid to receive reimbursement and should call 1-800-250-8427 to obtain an enrollment application.



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

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

Yes. For Medicaid, call the Green Mountain Care office to receive a replacement card. For Dr. Dynasaur, contact the Health Maintenance Organization that you selected to provide your benefits for Dr. Dynasaur.

- 5. Who can qualify for the Medicaid and Dr. Dynasaur programs?**

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

For Dr. Dynasaur, a child under age 19 living in Vermont who is a US citizen, permanent legal alien or refugee as determined by the Immigration and Naturalization Service is eligible if the family income is within the eligibility guidelines. Currently, a family of four can make up to \$67,350.00 and still qualify for Dr. Dynasaur.

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

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

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

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

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

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

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

Any Vermonter that experiences difficulty with Medicaid-related issues should call the Vermont Health Care Ombudsman's Office at 1 (800) 917-7787.

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

A natural disaster causes a great deal of stress on everyone. This can lead to increased tension and violence in family and household units. Domestic violence is a crime. You should contact the National Domestic Violence Hotline at 1-800-799-7233 or the Vermont Network Against Domestic Violence at 1-800-228-7395 or via email at [www.vtnetwork.org](http://www.vtnetwork.org) or in the Rutland area at the Rutland City Women's Network & Shelter 1-802-775-3223 or via email at [www.rcwn.org](http://www.rcwn.org)

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

Mental health services are coordinated in Vermont through the county Mental Health program offices. The county Mental Health office can assess an individual's need for treatment, determine eligibility and make a referral for treatment. You should contact the Rutland County Mental Health Service office a/k/a Community Care Network at 877-430-2273 or 802-775-2381 or via email at [www.rmhsccn.org](http://www.rmhsccn.org).

## **XIX. IMMIGRATION ISSUES**

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

### **Disaster Relief**

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

### **USCIS Offices**

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

U.S. Citizenship and Immigration Services  
VT Service Center  
78 Lower Welden  
St. Albans, VT 05479-0001

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

Immigrants with criminal record problems or immigration-related violations should contact non-profit immigration advocacy agencies before contacting (USCIS). Such agencies can be found by contacting the National Immigration Law Center at: <http://www.nilc.org>. An immigrant can also get recorded information about their individual court case by calling 1-800-898-7180 and entering their Alien Registration number.

For up-to-date information on USCIS operations in the wake of disaster, please visit: [www.uscis.gov](http://www.uscis.gov) or call the National Customer Service Center at 1-800-375-5283.

### **Frequently Asked Questions**

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

All immigrants, regardless of status are eligible for short-term, non-cash, in-kind, emergency disaster relief. Other ongoing disaster assistance programs are available to categories of eligible immigrants and citizens. Non-eligible immigrants (undocumented) should be advised to refrain from applying for cash assistance to avoid being reported to Immigration and Customs Enforcement (ICE) for possible deportation.

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

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

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

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

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

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

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

## XX. LOST DOCUMENTS

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

### ***Bank and investments accounts*** (checkbooks, savings, stocks, money markets)

- Contact your local bank or the nearest branch for help getting copies of statements, etc. The bank may be willing to waive its usual fee.

### ***Birth, death, and marriage certificates, divorce decrees***

- Certified copies of vital records (Vermont births, deaths, marriages, civil unions, and divorces) are available from the Department of Health or the Vermont State Archives and Records Administration (VSARA).
- To obtain a vital records, if the event took place:
  - **in the last five (5) years:** Order records from the Department of Health.  
Vermont Department of Health  
Vital Records  
P.O. Box 70  
Burlington, VT 05402-0070
  - **more than five (5) years ago:** Order records from the Vermont State Archives and Records Administration.  
Email: [vitals@sec.state.vt.us](mailto:vitals@sec.state.vt.us)  
Phone: (802) 828-3286  
Fax: (802) 828-3710
- Fees:
  - Certified copy: \$10.00
  - Verification: no charge
  - Record Search: no charge

### ***Court documents*** (such as deeds)

- Contact the attorney who represented the client for the transaction.
- Contact the town clerk's office.
- Contact the court clerk where the action was filed.
- Fees: The client may be required to pay fees to obtain copies of lost documents.

### ***Driver's License***

- Download the Replacement Driver's License Application Form at [www.dmv.vermont.gov](http://www.dmv.vermont.gov) or call 802-828-2000 (title and registration number). Clients can apply for a duplicate by mail at the Vermont Department of Motor Vehicles in Montpelier (see the address below) or in person at any branch location.

When applying for a replacement in person, be sure to bring one form each, primary and secondary identification, (full list of these identifications available at: <http://dmv.vermont.gov/licenses/drivers/requirements/identity>) as well as cash,

check, or a credit card to pay the \$15 processing fee. The applicant must fill out a request for a duplicate license.

If the original license was obtained after January 5, 2004, then the DMV has a digital photo on file —and a duplicate license can be ordered by mail. Two photocopied forms of ID, a check for \$15.00 and the application for a duplicate license must be sent to: DMV, State Street, Montpelier, VT 05603.

Vermont does not require that you notify the police that your license was lost or stolen, but it is advised to help prevent identify theft.

### ***Passports***

- United States Passports: Obtained through [www.travel.state.gov](http://www.travel.state.gov) or calling 1-877-487-2778.
- Foreign passport: Contact the country's nearest consulate.

### ***Government Benefit Cards***

- EBT Cards (food stamp cards):
  - 1-800-914-8605 (24 hours a day, 7 days a week).
  - Online: <http://dcf.vermont.gov/esd/ebt>
  - Local office: [http://dcf.vermont.gov/esd/contact\\_us/district\\_offices](http://dcf.vermont.gov/esd/contact_us/district_offices)
- Medicare/Medicaid cards:
  - 1-800-772-1213 (TTY 1-800-325-0778).
  - Online (Medicare only): <https://secure.ssa.gov/apps6z/IMRC/main.html>
  - Medicaid offices: [http://dcf.vermont.gov/esd/contact\\_us/district\\_offices](http://dcf.vermont.gov/esd/contact_us/district_offices)

### ***Social Security Cards***

- Adult:
  - Step 1: Gather documents to prove identity and citizenship/immigration status. All documents must be either originals or copies certified by the issuing agency.
  - Step 2: Complete application
  - Step 3: Take or mail your completed application and documents to your local Social Security Office:
    - 58 Pearl St., Burlington VT 05401
    - 33 School St., Montpelier VT 05602
    - 330 Asa Bloomer State Office Bldg., Rutland VT 05701
  - The new card will be issued in approximately 10 days.
- Child: Also provide documentation proving adults' identity, and custody/relationship to the child.