

**RESOURCE MATERIALS FOR
RESPONDING TO LEGAL QUESTIONS
FROM THOSE AFFECTED BY DISASTERS**



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SIDLEY

HOUSTON IMMIGRATION
LEGAL SERVICES COLLABORATIVE



Legal Aid of North West Texas



NOTICE TO ATTORNEYS

The preparation of these materials is a collaborative project of the State Bar of Texas, the Houston Bar Association, Sidley Austin, LLP, the Houston Immigration Legal Services Collaborative, Houston Volunteer Attorneys, Legal Aid of NorthWest Texas, Lone Star Legal Aid, Texas RioGrande Legal Aid, United Policyholders, and Disability Rights Texas and the result of the efforts of many dedicated and committed attorneys in the State of Texas.

This document is a work in progress. We may be revising chapters and adding chapters as we identify additional needs of those we are assisting. In that regard, we would like to hear from you regarding questions that you are fielding and thoughts on how this document can be improved. If you have comments or questions, please contact Saundra Brown at sbrown@lonestarlegal.org. Please check frequently the websites of the State Bar of Texas (www.texasbar.com), and TexasLawHelp (www.TexasLawHelp.org) to make sure that you are using the latest version of this document.

If you have an interest in providing legal assistance to the victims of disasters, whether in person or by phone, please fill out the online form that can be found on the State Bar of Texas website at www.texasbar.com. Alternatively, you can contact the Legal Access Division of the State Bar of Texas at (800) 204-2222 (ext. 1855).

HELPFUL DISASTER RELIEF WEBSITES (2020)

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

Federal Emergency Management Agency	www.fema.gov
Houston Bar Association	www.hba.org
Houston Volunteer Lawyers Program	www.makejusticehappen.org
Insurance Information Institute	http://www.iii.org
LawHelp – Texas	www.TexasLawHelp.org
Legal Aid of NorthWest Texas	www.lanwt.org
Lone Star Legal Aid	www.lonestarlegal.org/
National Disaster Legal Aid	www.disasterlegalaids.org
Probono.net	www.probono.net
Social Security Administration	www.ssa.gov/emergency
State Bar of Texas	www.texasbar.com
Texas Governor’s Office	www.governor.state.tx.us/
Texas Legal Answers	https://texas.freelegalanswers.org/
Texas Legal Services Center	www.tlsc.org
Texas RioGrande Legal Aid	www.trla.org
U.S. Health & Human Services	www.hhs.gov
U.S. Internal Revenue Service	https://www.irs.gov/
U.S. Postal Service	www.usps.com

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1.0 INTRODUCTION

1.1 Overview of This Document

This document is provided as a resource to attorney volunteers who are fielding questions from those affected by disasters. This document is a starting point and is not intended to be the sole resource for you to rely on in providing legal assistance to those affected by natural disasters.

In 2020, this document has been updated with supplemental information related to the legal assistance needed for those affected by COVID 19.

If a matter needs further legal representation that would qualify for submission to the legal aid services organizations or clinics (all of which are based on whether or not the applicant satisfies the intake criteria), you should gather pertinent information as instructed by the organization managing disaster legal services in your area for further processing. See Table 1 below for information regarding the legal services organizations that are providing disaster legal services in the different areas.

NOTE: If you have cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect, Texas law imposes a duty on you to report that within forty-eight hours to local law enforcement or the Texas Child Abuse Hotline (1.800.252.5400). For more information, visit <https://www.texasattorneygeneral.gov/cvs/when-you-suspect-child-abuse-or-neglect-a-general-guide>.

You may also have a duty to report certain criminal activity.

Table 1. Listing of Legal Services Providers that Provide Disaster Legal Services

For a complete list of legal services providers, please see the State Bar of Texas Referral Directory, Legal Services and Other Resources for Low-Income Texans, available at www.texasbar.com/referraldirectory.

LSC Programs (Texas)	
Lone Star Legal Aid 713-652-0077 www.lonestarlegal.org/	East Texas (from Galveston to Texarkana, including Houston and the greater Houston area)
Legal Aid of NorthWest Texas (888) 529-5277 www.lanwt.org/	North and West Texas
Texas RioGrande Legal Aid (866) 757-1570 www.trla.org/	South, Central and West Texas
Legal Aid and Bar Associations	
Dallas Volunteer Attorney Program 515 Main St. Dallas, Texas 75201 214-748-1234 www.dallasvolunteerattorneyprogram.org	Joint program of the Dallas Bar Association and Legal Aid of Northwest Texas.
Disability Rights Texas Headquarters/Central Texas Regional Office 2222 West Braker Lane Austin, Texas 78758 512) 271-9391 (800) 252-9108 (Intake for New Callers) 1-866-362-2851 (Intake for Individuals with Hearing Disabilities) http://www.disabilityrightstx.org/	Advocates legal rights of those with disabilities.
Fort Bend Lawyers Care PO Box 1647 Richmond, Texas 77469 (281) 239-0015 www.FortbendLawyersCARE.org E-mail: info@fortbendlawyerscare.org	
Houston Volunteer Lawyers 1111 Bagby, Suite FLB300	Houston metropolitan area. The service arm of the Houston Bar Association.

Houston, Texas 77002 (713) 228-0732 (713) 759-1133 (Legal Line – 1 st & 3 ^d Wednesday each month, 5:00 pm – 8:00 pm) (713) 759-1133 (Consejos Legales– 1 st Thursday each month, 5:00 pm – 8:00 pm) www.makejusticehappen.org/ E-mail: info@hvlp.org	
Texas Legal Services Center 2101 S IH 35 Frontage Rd. Austin, Texas 78741 512-477-6000 https://www.tlsc.org/	
Volunteer Legal Services of Central Texas 1033 La Posada Drive, Suite 374 Austin, Texas 78752 (512) 476-5550 www.vlsoct.org	

1.2 The Role of the Volunteer Lawyer

Type of Legal Services Rendered – Following a disaster, volunteer lawyers may be asked to assist in several types of disaster legal relief. While the focus at each location may be different based on the current needs of the survivors, the type of assistance you will be providing is similar. Generally, you may provide the following types of legal services:

1. **Legal Information.** Provide general legal information including rights on types of different matters following a disaster. Information is generally not specific to the individual’s situation.
2. **Individual Advice or Counsel.** Legal information or advice for a specific issue the individual survivor is experiencing.
3. **Limited Scope Assistance.** Some survivors will need immediate assistance but limited in scope. For example, the survivor may need assistance with completing a FEMA application or writing a demand letter to a landlord to terminate a lease for a flooded rental.
4. **Complete Direct Representation.** As survivors begin to recover, they will encounter legal issues for which they will need longer-term direct legal representation. The types of legal issues are different depending on the stage of recovery.

You may volunteer at the following types of events or locations:

1. Shelter
2. Disaster Recovery Center (DRC)
3. Phone Banks
4. Legal Advice Clinics
5. Remote Assistance

Based on past experiences with disasters, you may be asked to provide advice on a wide range of issues. Again, the types of legal issues may be different depending on the stage of recovery. Types of issues include—

1. assisting with filing for emergency assistance,
2. assisting with insurance claims (life, property, medical, etc.),
3. counseling on lessor-lessee matters, including eviction defense,
4. counseling on homeowner and other housing problems,
5. assisting with home repair contracts including contractor fraud,
6. assisting in consumer protection matters, remedies, and procedures,
7. assisting with disaster-related unemployment claims,
8. counseling on mortgage foreclosure problems,
9. drafting advanced planning documents, such as wills and transfer-on-death documents,
10. replacing of important legal documents destroyed in the natural disaster, such as wills and green cards,
11. drafting of powers of attorney,
12. estate administration, including clearing title (insolvent estates),
13. tax questions,
14. preparation for guardianships and conservatorships, and
15. referring individuals to local or state agencies which might be of further assistance (e.g., consumer affairs).

Nonlegal Services Assistance – Depending on the size and scope of a disaster, disaster legal services may need assistance with practical needs including printing materials for distribution, delivering the materials to different recovery locations, and distribution of materials.

1.3 Information You May Need in Helping Those Affected by the Disaster

The type of information you may need will depend on the type of assistance that you are providing. Check with the legal services organization which is managing the disaster legal services location on the type of information you will need to collect. Generally, the organization will have an application which includes the information needed for the type of assistance you are providing.

Generally, you will obtain the following information from the individual you are assisting:

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

Note regarding FEMA Assistance: Only U.S. citizens and qualified aliens are entitled to FEMA benefits; however, children born in the U.S. to undocumented aliens qualify for FEMA benefits. Undocumented aliens are entitled to noncash assistance through FEMA, including disaster legal services, emergency food and shelter, and crisis counseling. For more information, visit <https://www.fema.gov/news-release/2004/06/17/questions-and-answers-undocumented-immigrants-regarding-fema-assistance>.

1.4 Practice Tips for Providing Assistance for Those Affected by Disaster

Here are general tips when working with an individual who has been affected by a disaster.

- **Remember that Individuals May Have Limited Access to Communication.** Individuals may have limited access to different types of communications, and flexibility is recommended. For example, an individual may not have an email account or unlimited access to the internet for virtual meetings; or an individual may have limited minutes on their cell phone plan. If an individual is displaced and currently residing in a shelter or other temporary accommodations, they may not be able to charge their phone.
- **Recognize that Lack of Response Does Not Equal Lack of Interest/Commitment to their Matter.** Individuals affected by a disaster are generally in survival mode, and they may be addressing other needs that are a higher priority for their situation, resulting in a slower response time to their legal matter. Again, flexibility and patience is recommended. If there is continued non-responsiveness, work with the legal aid provider for appropriate next steps.
- **Work with Their Limited Availability.** Individuals may not have the same flexibility in their schedule for meetings or phone calls. Some individuals will have hourly work schedules, from which they cannot take paid time-off, or they do not have access to child care. Keep in mind that, on occasion, an individual may make an appointment, but due to work constraints is not able to attend and they may not be able to call you prior to the appointment to cancel.
- **Manage Expectations.** For many low-income individuals, this may be the first time that they have worked with an attorney, and their expectations can vary widely. Take the time to manage their expectations from your availability and level of assistance to the type of outcome that they hope to achieve.
- **Provide Trauma-Informed Advocacy.** Survivors of disaster have experienced a trauma, which may have taken a mental toll on the individual. When working with a survivor, be mindful of asking the individual to “relive” the experience multiple times. Reach out to the legal aid provider for assistance with individuals experiencing trauma or other mental health concerns.
- **Use Interpreter Services.** If the individual has limited English proficiency, use an interpreter. For pro bono cases taken through approved legal aid and pro bono services providers, you may have free access to the Language Access Fund, administered by the State Bar Legal Access Division.

1.5 Locating Missing Family and Friends

Persons affected by a disaster may notify loved ones of their well-being by registering on the Safe and Well feature of www.redcross.org. Click the “Get Help” tab, and then click “List Yourself as Safe and Well.” Concerned family and friends can search the list of those who have registered themselves as “safe and well” by clicking “Search for a Family Member.”

Another source for information on how to locate a family member or friend affected by a disaster is <https://www.usa.gov/after-disaster> (then go to steps 4 & 5 below) or www.usa.gov, and follow steps 1–5 below.

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

2.0 FEMA AND RELATED FORMS OF ASSISTANCE

2.1 What Does a State of Disaster in Texas Mean?

Chapter 418 of the Texas Government Code establishes the Governor's powers and duties regarding emergency management. The Governor is responsible for the dangers to the state and people caused by disasters (§ 418.011). Using an Executive Order or Proclamation, the Governor may declare a State of Disaster if the Governor finds "a disaster has occurred or that the occurrence or threat of disaster is imminent" (§ 418.014). A State of Disaster Declaration activates the disaster recovery and rehabilitation aspects of the state emergency management plan applicable to the area subject to the declaration; and authorizes the deployment and use of any forces to which the plan applies and the use or distribution of any supplies, equipment, and materials or facilities assembled, stockpiled, or arranged to be made available under this chapter or other law relating to disasters, (§ 418.015).

What is the difference between a National Emergency and a Major Disaster Declaration?

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207 § 401 provides for two types of disaster declarations: An Emergency Declaration and a Major Disaster Declaration. If the President determines federal assistance is needed to supplement State efforts in providing emergency assistance, an Emergency Declaration can be declared. If first requested by a Governor and the President determines that a natural event such as a hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or, regardless of cause, fire, flood, or explosion has caused such severe damage that it will overwhelm State and local governments responses, the President may declare the event a Major Disaster. Once a Major Disaster Declaration is approved, the President can approve or deny any request for individual or public assistance made in the Governor's request. Three types of disaster assistance programs include Individual Assistance, Public Assistance, and Hazard Mitigation Assistance.

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

Individuals, families and businesses may be eligible for federal assistance if they live, own a business, or work in a county declared a Major Disaster Area. Help may also be available to those who have incurred sufficient property damage or loss and do not have insurance or other resources to meet their needs. **The most important thing a disaster survivor must do to obtain FEMA assistance is to register with FEMA.** To apply for Assistance for Individuals and Households, individuals should register with FEMA toll-free at 1-800-621-FEMA (TTY: 1-800-462-7585) within **sixty days of the declaration of the disaster**. The FEMA publication entitled "Individual Assistance Program Policy Guide" (IAPPG) includes information about what type of assistance is available under various FEMA programs, who is eligible, the process for obtaining assistance, and frequently asked questions. It is available online at www.fema.gov/individual-assistance-program-and-policy-guide.

However, not everyone who has been affected by a disaster is entitled to FEMA assistance. FEMA has established a policy for preventing duplication of benefits under [44 C.F.R. § 206.191](http://www.fema.gov/individual-assistance-program-and-policy-guide). FEMA's duplication of benefits policy establishes the order in which the major forms of assistance should be provided (i.e., the sequence of delivery). The agency that has the primary responsibility for delivering a certain type of assistance should provide that assistance first and may do so without regard to other agencies with similar assistance that are lower in the sequence. Agencies are not prohibited from disrupting the sequence of delivery when it serves to expedite the recovery of an applicant. However, the agency that disrupts the sequence of delivery must take corrective action.

Delivery Sequence Charts can be found at:

English - www.fema.gov/media-library/assets/documents/170327

Espanol/Spanish - www.fema.gov/es/media-library/assets/documents/32169

Chinese - www.fema.gov/media-library/assets/documents/32290

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

1. **Volunteer agencies' emergency assistance** (except expendable items such as linens and basic kitchenware).
2. **Private insurance benefits** (homeowners, windstorm, flood, and/or automobile insurance) – Insured applicants must file a claim with their insurance company or companies before receiving federal assistance. They may be eligible to receive disaster assistance if they have insufficient coverage or have items not covered by their insurance policy.
3. **FEMA Individuals and Households Program (IHP)** – FEMA IHP provides grants directly to eligible individuals. The application period is sixty days from the disaster declaration, unless extended by FEMA. IHP includes Housing Assistance (HA) and Other Needs Assistance (ONA). Although there is a single application process and application number, Texas uses a bifurcated process for decisions as set forth below. Furthermore, as of October 2018, HA and ONA are subject to separate caps on assistance. (The cap for each for FY 2020 is \$35,500 but is subject to change each year.) Some eligibility requirements are to both forms of IHP, such as the requirement that the applicants' primary residence be located in a county included in the federal declaration of disaster and that at least one household member be a U.S. citizen or "qualified alien" as described in [Q. 2-11](#) below.

Both programs include several subcategories of assistance.

A. **IHP Housing Assistance (HA):** FEMA funds and generally¹ administers all aspects of HA.

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

This includes:

- a. Lodging expense reimbursement for the cost of short-term lodging such as hotel rooms (but food, transportation, telephone, separately billed utilities, and other services are not eligible for reimbursement).
- b. Rental assistance to rent a dwelling for the pre-disaster household to live in, generally disbursed in two-month increments, and subject to the approval of requests for continued assistance, available for up to eighteen months. Rental assistance is not counted against the HA cap.
- c. Direct Housing Assistance, which is only offered when existing rental properties are not able to meet the demand. FEMA may provide in-kind assistance, such as

¹During Hurricane Harvey, the Texas General Land Office administered some forms of Direct Housing Assistance. Similar efforts are authorized under the Disaster Recovery Reform Act of 2018 so should be anticipated in future disasters, especially those involving catastrophic damage.

in the form of trailers, manufactured homes, or other readily fabricated dwellings, for use as temporary housing. As with rental assistance, this is generally available for up to eighteen months and remains subject to recertification of continuing eligibility. (Applicants receiving Direct Housing Assistance become ineligible for the financial forms of THA.)

2. **Home Repair and Replacement Assistance:** These forms of assistance are only available to those who also meet FEMA’s definition of “owner-occupant.”
 - a. Home repair: Financial assistance is available for repairs necessary to restore a disaster-damaged home to a habitable condition. HR is not intended to address all of the damages or to completely restore a home to its pre-disaster condition.
 - b. Replacement assistance: Owners with destroyed homes can receive funds (subject to the IHP HA cap) towards the purchase of a new home.
- B. **IHP Other Needs Assistance (ONA)** – ONA is funded by both FEMA and the state of Texas and is administered by the Texas Health and Human Services Commission. ONA includes financial assistance to address:
1. Disaster-related medical and dental costs.
 2. Disaster-related funeral and burial costs.
 3. Disaster-related childcare costs.
 4. Funds to repair or replace essential items of property or to address serious needs, such as clothing, household items (room furnishings, appliances), tools (specialized or protective clothing and equipment) required for the applicant’s job, necessary educational materials (computers, schoolbooks, supplies).
 5. Fuels for primary heat source (heating oil, gas).
 6. Clean-up items (wet/dry vacuum, dehumidifier).
 7. Funds to repair or replace an essential disaster-damaged vehicle (excluding cosmetic damage).
 8. Moving and storage expenses related to the disaster (moving and storing property to salvage and/or avoid additional disaster damage).
 9. Other necessary expenses or serious needs as determined by FEMA (such as Critical Needs Assistance available following Hurricane Harvey – a \$500 lump sum payment for applicants with immediate critical needs for “life-saving” and “life-sustaining” items).

Other expenses that are authorized by law, www.dads.state.tx.us/handbooks/ihp-ona/.

Other Needs Assistance Fair Hearing Requests:

After two appeals for ONA assistance have been denied or the applicant disagrees with the amount of ONA benefits received from Texas Health and Human Services, the

applicant may challenge the decision regarding the amount of benefits by filing an appeal and requesting a fair hearing by fax at 1-800-827-8112. The request should include the applicant's FEMA registration number, the applicant's name, and the last four digits of the applicant's Social Security number. A person generally has sixty (60) days to file an appeal from the date on the last denial letter from ONA. Legal counsel may represent the applicant in the hearing for ONA benefits, or the applicant can do the hearing pro se. If an attorney is representing a disaster survivor in a fair hearing, the attorney will need to submit TxHHSC Form H1003, Appointment of an Authorized Representative to Allow Another Person to Act for You, and Form H1826, Case Information Release, along with a request for a Fair Hearing.

Once TxHHSC ONA receives the request for a hearing, the applicant will be notified of the date of a hearing. If needed, the applicant may request that a translator be present during the hearing and the documents be provided to the applicant in their primary language. TxHHSC ONA must provide the applicant with the evidence that the agency used to make its decision. If the applicant does not receive this, the applicant should ask for the evidence packet. The applicant should submit any evidence they have supporting their claim for assistance to TxHHSC ONA before the hearing. If there is an Opposing Counsel representing the Agency, the applicant's evidence packet will need to be submitted at least twenty (20) days prior to the hearing. Additionally, the applicant can request interrogatories. The notice will have a phone number to call for the hearing. There will be a Hearings Officer and a representative from TxHHSC ONA on the line. The applicant will have the opportunity to present the reasons why they believe they are eligible for ONA benefits to a hearing officer. The applicant has the right to call witnesses and the right to ask the TxHHSC ONA representative and their witnesses questions. Additionally, the applicant can request that TXHHSC ONA produce a FEMA witness for cross-examination. The TxHHSC ONA representative will also have a chance to explain why they believe that the applicant is not eligible for more benefits. After the hearing, the applicant will receive a decision from the Hearings Officer containing the decision about the applicant's case. If the applicant disagrees with the Hearings Officer's decision, they may appeal and request a Procedural Review of the case.

Section 1000 of the Texas Health and Human Services Fraud and Fair Hearings Handbook provides information on the appeals process including the rules governing hearings procedure, evidence, and appellants' rights. Texas Rules of Evidence and Texas Rules of Civil Procedure do not apply to THHSC ONA Fair Hearings. In addition to relying on the THHSC Fraud and Fair Hearings Handbook, consult the State Administrative Plan regarding HHSC policy and guidance for ONA benefits.

Importantly, all forms of ONA besides medical, dental, and funeral expenses are "SBA-dependent." Applicants must apply and be found ineligible for Small Business Administration disaster loans before those aspects of their ONA applications will be considered further.

4. **Small Business Administration (SBA) disaster loans** - SBA provides low-interest, long-term disaster loans for individuals to repair/replace real and personal property for nonfarm businesses. If SBA determines that an applicant is ineligible for an SBA loan or if the loan amount is insufficient, SBA refers the applicant to FEMA for additional consideration. Borrowers are required to maintain appropriate hazard and flood insurance, where required. SBA can only approve a loan to an applicant with a reasonable ability to repay the loan. As noted above, if an applicant is referred to do so, the applicant must apply for an SBA loan,

even if you do not own a business. SBA provides disaster loans to individuals and businesses that are able to repay the loans. *If your only expenses are disaster-related medical, dental, or funeral bills, you do not need to apply for an SBA loan.* If you choose not to do so, you might find yourself barred from future recovery programs. If you are denied, you will be referred back to FEMA for consideration for further funding. If you are approved, you do not have to accept the loan, but note that refusal of that assistance will negatively impact eligibility for further FEMA IHP.

For more information regarding Small Business Administration (SBA) disaster loans, see Chapter 16, Community Organizations/Small Businesses.

5. **Volunteer organizations** - Those that provide assistance during recovery as well as during immediate emergency response. This includes national and local groups.
6. **Cora C. Brown Fund** – This fund, named after Cora Brown, who died in 1977 and bequeathed part of her estate to the federal government to be used solely for human suffering caused by natural disasters, is used for disaster victims who have exhausted all avenues of assistance but who still have unmet needs. Disaster victims need not apply for this assistance. By applying for disaster assistance, FEMA identifies potential recipients. FEMA uses these funds under the authority of [42 U.S.C. § 5201\(b\)](#) of the Stafford Act and [44 C.F.R. § 206.181](#).

Other forms of individual assistance programs include:

- **Disaster Unemployment Assistance (DUA)** – DUA provides unemployment benefits and re-employment services to people who are otherwise ineligible for regular state unemployment compensation and who have become unemployed because of major disasters. Benefits begin with the date the individual was unemployed due to the disaster incident and can extend up to twenty-six weeks after the presidential declaration date. These benefits are made available to individuals not covered by other unemployment compensation programs, such as the self-employed, farmers, migrant and seasonal workers and those who have insufficient quarters to qualify for other unemployment compensation. DUA is funded 100 percent by FEMA and administered by the Department of Labor through the Texas Workforce Commission (TWC). **All unemployed individuals must register with the state’s employment services office (TWC) before they can receive DUA benefits.**
For program requirements and instructions on how to apply for DUA, see <http://www.twc.state.tx.us/jobseekers/disaster-unemployment-assistance> and <https://www.disasterassistance.gov/get-assistance/forms>.
- **Disaster Legal Services (DLS)** – FEMA works with the American Bar Association-Young Lawyers Division (ABA-YLD) and its partners on the state and local levels to provide free legal assistance for disaster survivors. In Texas, DLS partners include the State Bar of Texas; the three Texas legal aid organizations funded by the Legal Services Corporation, which are Legal Aid of Northwest Texas, Lone Star Legal Aid, and Texas Rio Grande Legal Aid; and programs such as the Houston Volunteer Lawyers Project and local bar associations. The SBOT, in partnership with the LSC-funded organizations, consistently operates a disaster hotline at 1-800-504-7030.
- **Crisis Counseling** – Funds are provided by FEMA as a grant to state and local mental health agencies to provide crisis counseling to help relieve grieving, stress, or mental health problems resulting from the disaster or its aftermath.

- Also, the Substance Abuse and Mental Health Services Administration runs a Disaster Distress helpline at 1-800-985-5990. See <http://www.samhsa.gov/find-help/disaster-distress-helpline>.

2.2 Applying for FEMA Assistance

Q. 2-1 How do I apply for disaster help?

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

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

Q. 2-2 What happens after I apply for disaster assistance?

FEMA will mail you a copy of your application.

- If your home or its contents are damaged and you do not have insurance, an inspector should contact you within ten to fourteen days after you apply to schedule a time to meet you at your damaged home.
- If your home or its contents were damaged and you have insurance, you need to work through your insurance claim first and provide FEMA with a decision letter (statement or denial) from your insurance company before FEMA issues an inspection. There is an exception for damages caused by flooding; if you have flood insurance, FEMA will issue an inspection before receiving a copy of your flood insurance decision letter to evaluate your eligibility for temporary living expenses because temporary living expenses are not covered by flood insurance.
- Within about ten days after the inspection, FEMA will notify you of its decision regarding your eligibility for assistance. If you qualify for a grant, FEMA will send you a check by mail or deposit it into your bank account. FEMA will also send you a letter describing how you are to use the money (for example: repairs to your home or to rent another house while you make repairs).
- If FEMA decides that you do not qualify for a grant, FEMA will send you a letter explaining why you were turned down and give you a chance to appeal the decision. **Appeals must be in writing and mailed within sixty (60) days of FEMA’s decision.**
- If you get an SBA Disaster Loan application in the mail, you must complete and return the application to be considered for a loan as well as certain types of grant assistance. SBA representatives are available at Disaster Recovery Centers to help you with the

application. If the SBA finds that you cannot afford a loan, they will automatically refer you back to FEMA's IHP for help.

- If the SBA approves you for a loan, they will contact you.
- If the SBA finds that you cannot afford a loan, FEMA will contact you.

NOTE TO VOLUNTEERS: PLEASE ALSO REFER TO ANSWERS TO QUESTIONS 2-25 & 2-30 BELOW BEFORE RESPONDING TO THIS QUESTION.

Q. 2-3 Two weeks ago, I mailed in the documents requested by FEMA. When I called the helpline, the service representative said the documents were not in my file. What should I do?

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

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

FEMA may also contact you via a recorded message informing you that FEMA has received your documents, and you can check the status of your application by creating an account at [DisasterAssistance.gov](https://www.disasterassistance.gov) and clicking Check Your Status.

As a related matter, you should keep your phone number and mailing address current in FEMA's records.

Q. 2-4 The letter from FEMA said I had no damages or insufficient damages, but my home was damaged and some of my personal property was damaged too. What do I do?

You may appeal most decisions within sixty (60) days of the decision letter. When you appeal a decision, you are asking FEMA to review your case again. Appeals may relate to your eligibility, the amount or type of help you received, late applications, or requests to return money. You will not automatically get another inspection just because you appeal. FEMA has up to ninety (90) days to issue a decision on the appeal. If you want more specific legal advice or services, you may contact the SBOT Disaster Hotline at 1-800-504-7030.

See also https://www.lawhelpinteractive.org/login_form?template_id=template.2013-01-01.0389547927&set_language=en if you prefer to prepare a FEMA appeal on your own with the probono.net template. This is good for all states. See also resources available at [disasterlegalaid.org](https://www.disasterlegalaid.org).

Q. 2-5 How long does it take to get help from FEMA?

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

Q. 2-6 I applied for disaster assistance two weeks ago and haven't heard from anyone. I keep calling the 1-800-621-3362 number, but I get a busy signal. Is there another way to follow up on my claim?

If you have access to the Internet, you may want to consider checking the status of your case online. You can also check the status of your case by creating an account to track your progress at DisasterAssistance.gov. (Caution – when you use the online account, you may choose whether to receive notices by mail or electronically. If you choose the latter, make sure to consistently monitor the account so as not to miss important notices which trigger appeal deadlines.) Another option is to visit a Disaster Recovery Center in your area, if there is one.

Q. 2-7 I received my check for rental assistance or hotel assistance, but there are no places to rent.

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

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

Q. 2-8 I didn't receive enough money from FEMA to meet all my needs. What do I do now?

Most disaster aid programs are intended to meet only essential needs and are not intended to cover all your losses. Also, some people qualify for assistance from more than one program and may receive additional help from another agency. For example, the Small Business Administration is a very important source of funding for repair and replacement of real and personal property. If you received a loan application packet from the SBA, please complete and return the application as soon as possible. No work can begin on the loan until you submit your application. If you do not agree with FEMA's decision, you may appeal the decision. To file an appeal, follow the appeals process that is explained in your letter from FEMA. If you want more specific legal advice or services with an appeal, you may contact the SBOT Disaster Hotline at 1-800-504-7030.

Q. 2-9 I know of others in my neighborhood, city, or state who received help from FEMA, however I was told I have insufficient damages. Does FEMA use the same criteria when considering damages for everyone?

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

Q. 2-10 I have a new telephone number. How do I update my application?

Some information, such as current phone number, mailing address, or insurance policy number, can be updated online at [DisasterAssistance.gov](https://www.DisasterAssistance.gov) (click “Check Status” and log into your online account or create an account). To update other file information you will need to call the FEMA Disaster Helpline at 1-800-621-FEMA (3362) (hearing/speech impaired ONLY—call TTY: 1-800-462-7585), visit a Disaster Recovery Center, or write to FEMA at the address provided on any correspondence you have received. Even if you update the information by phone or in person at a Disaster Recovery Center, it is best to confirm your request to FEMA in writing.

Q. 2-11 What are FEMA’s citizenship/immigration requirements?

You must be a U.S. citizen or a “qualified alien” to receive FEMA financial assistance, including the Individuals and Households Program and Disaster Unemployment Assistance. If you or your spouse are not U.S. citizens or considered “qualified aliens,” but your child is, then your household can apply on his or her behalf.

FEMA can provide information on how to obtain a Social Security number for a minor child. The minor child must live with the parent/guardian applying on his/her behalf.

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

Q. 2-12 What immigrants are considered “Qualified Aliens”?

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

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

If applicants are uncertain about whether their immigration status falls within the qualified alien category, they should consult an immigration expert. One option to try to connect with such an expert is to contact the SBOT Disaster Hotline at 1-800-504-7030.

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

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

- b. lawfully present for purposes of performing such services (for example, present on a temporary work visa); or
- c. permanently residing in the United States under color of law at the time such services were performed (this can be complicated—consult with an immigration attorney).

See 20 C.F.R. § 625.6(a)(1). With some exceptions, an individual’s weekly benefit amount is normally calculated using the wage credits earned during her “base period” (for example, for Hurricane Harvey, that would be the 2016 calendar year). See *Tex. Lab. Code* §§ 201.011, 207.004. Therefore, this second requirement usually will mean that the noncitizen must have had one of the three statuses above during her “base period” or a portion of her “base period.” Otherwise, the individual may qualify for benefits when she applies, but her benefits will be zero because she did not have a qualifying status when she was earning her “base period” wages. For an explanation of the “base period,” see <http://www.twc.state.tx.us/jobseekers/disaster-unemployment-assistance#weeklyBenefitAmount> and <http://www.twc.state.tx.us/jobseekers/eligibility-benefit-amounts>.

2.3 Disaster Recovery Centers

Q. 2-13 What is a Disaster Recovery Center and what services do they provide?

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

NOTE: You can register for assistance at a DRC, or use the “Find Assistance” tab at DisasterAssistance.gov or call 1-800-621 FEMA (3362) (hearing/speech impaired ONLY-Call TTY: 1-800-462-7585).

Q. 2-14 What are some of the services that a DRC can provide?

A DRC may provide:

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

Q. 2-15 What is the American Bar Association-Young Lawyers Division Disaster Legal Services Program?

The American Bar Association-Young Lawyers Division Disaster Legal Services (DLS) program operates under a memorandum of understanding with FEMA to provide immediate temporary legal assistance to disaster survivors for free. The DLS program is activated when there is a presidential disaster declaration authorizing Individual Assistance. DLS partners with state bar associations and other organizations across the country, providing vital funds and resources to state hotlines and facilitating pro

bono attorney involvement. DLS has a long history of partnering with the State Bar of Texas, organizations funded by the Legal Services Corporation, and other partners in order to provide legal services to low-income Texans with disaster-related legal needs. In 2020, the DLS program established a national hotline to connect disaster survivors to their-state-specific hotlines. The national toll-free disaster hotline number, provided by RingCentral Inc., is 888-743-5749. Calls from Texans are in turn directed to the State Bar of Texas disaster hotline at 1-800-504-7030. . More information about DLS may be found here: https://www.americanbar.org/groups/young_lawyers/projects/disaster-legal-services/about/. The ABA also provides information about opportunities to provide pro bono assistance to disaster survivors at the following portal: <https://aba.joinpaladin.com/aba-disaster-relief/>.

2.4 Employment Issues

Q. 2-16 I lost my job because of a disaster and am unable to make my mortgage (or rent) payments. Will FEMA make payments until I can return to work?

No. FEMA is not authorized to make such payments. If you lost work because of the disaster and are not eligible for standard unemployment compensation, you may still qualify for Disaster Unemployment Assistance (DUA). See the DUA section above or contact the local office of your state's Employment Commission for information about DUA. The DUA program covers most people affected by a disaster, including many who do not normally qualify for regular unemployment aid. Also, be sure to speak to your lender or landlord and explain your circumstances. Special arrangements can often be made.

Q. 2-17 I lost my job because of the COVID-19 Pandemic and am unable to make my mortgage (or rent) payments. Will FEMA make payments until I can return to work?

No. FEMA is not authorized to make such payments. However, the CARES Act expands states' ability to provide unemployment insurance for many workers impacted by the COVID-19 pandemic, including for workers who are not ordinarily eligible for unemployment benefits. As soon as possible following becoming unemployed, contact the Texas Workforce Commission to apply for unemployment benefits. The Texas Workforce Commission can be reached by phone at 1-800-939-6631 or by email at <https://www.twc.texas.gov/jobseekers/unemployment-benefits-services>. See also Chapter 6, Employer/Employee Issues.

Q. 2-18 I have not been able to work since the disaster hit. My employer says that I still have a job, but I am not drawing a paycheck. Does FEMA pay for lost wages?

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

The Texas Workforce Commission (TWC) may accept applications for Disaster Unemployment (DUA) as a result of a Presidential Disaster Declaration for workers who lost their jobs and self-employment individuals who have been unable to work due to a disaster.

Applicants must mail in or fax all required documentation within twenty-one days from the date of the DUA application. Send mailed documentation to: TWC, UI Support Service Department, Attn: DUA, 101 E. 15th St., Room 354, Austin, TX, 78778-001, or fax it to (512) 936-3250.

2.5 Farm/Agricultural Damages

Q. 2-19 I had damages to my farm or ranch. Can FEMA help me?

If you sustained damages to your home or personal property, you should apply with FEMA for assistance. If you had damages to your crops, livestock, farm equipment, barns, dairy, or something similar, you should contact your local Farm Services Agency office to inquire about the USDA's disaster assistance program. The Texas Farm Service Agency is available at: <http://www.fsa.usda.gov/FSA/stateoffapp?mystate=tx&area=home&subject=landing&topic=landing>.

FEMA does not offer grant assistance to businesses and farmers but does act as a referral agency. FEMA may also maintain a list of additional referral resources for business owners and farmers that can be accessed at [FEMA.gov/disasters](http://www.fema.gov/disasters) (select your state) or by calling the FEMA Helpline (1-800-621-3362). Additional information is available at <https://www.fema.gov/what-do-if-your-business-or-farm-was-damaged>.

2.6 Inspections

Q. 2-20 The inspector told me I was going to get money from FEMA. However, I got a letter from FEMA stating that I was not eligible. Which is correct?

The letter is correct. The inspectors are FEMA contractors and are not authorized to comment on eligibility matters. Inspectors record their determinations about what damage the disaster caused to your home and other property and provide that information to FEMA in the form of an inspection report. FEMA then relies on that information and its own standards to determine your eligibility.

Q. 2-21 What will FEMA accept as proof that I occupied my home?

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

Q. 2-22 What will FEMA accept as proof that I own my home?

There are several documents that may be used to prove ownership. They include, but are not limited to: the deed, deed of trust, mortgage payment book or other mortgage documents, real property insurance policy, tax receipts, or property tax bill, or documentation showing that the applicant was responsible for maintenance of the home. There are three ways to be treated as an owner-occupant for FEMA benefits. Option one is to actually demonstrate legal ownership. Option two allows people who do NOT hold legal title, pay no rent, but who are responsible for the payment of taxes or maintenance of the residence, to prove ownership. Option three is for people with a life estate. See 44 C.F.R. § 206.111. (<http://www.ecfr.gov/cgi-bin/text-idx?SID=56b83570b5dde2206384e617abdf9a34&node=44:1.0.1.4.57.4.18.4&rgn=div8>)

Q. 2-23 My inspector called me, and I missed the call. How do I contact the inspector?

The FEMA inspector should provide you with contact information so you may return the missed call. FEMA inspectors will try to call you three times to arrange an appointment to inspect your property. If

you do not respond promptly, FEMA inspectors will relay that information to FEMA and your application may be denied as “voluntarily withdrawn.” While this denial may be appealed, at best such a decision delays consideration of your application and should be avoided if possible.

Inspectors will call your current phone contact number and the alternate if you provided one. If any of your contact information has changed, call the Helpline to update the information. The inspector may leave a notice at your damaged home with contact information if they cannot reach you by phone.

Q. 2-24 I am not English proficient. How will I be able to communicate with the inspector?

FEMA is responsible for providing effective communication with people who are limited English proficient. FEMA must take into account habitability standards for people with accessibility issues in their assessment. To schedule an appointment with an inspector, call the FEMA hotline toll-free at 800-621-3362, voice/VP/711. Multilingual operators are available. TTY users may call 800-462-7585. See also Chapter 18, Disability Rights.

2.7 Insurance

Q. 2-25 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.

<p>NOTE TO VOLUNTEERS: PLEASE ALSO REFER TO ANSWERS TO QUESTIONS 2-2 ABOVE AND 2-30 BELOW BEFORE RESPONDING TO THIS QUESTION.</p>
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Q. 2-26 I have received a settlement from my insurance company and it is not enough to cover my losses. What should I do now?

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

Q. 2-27 Are insurance deductibles covered under FEMA's programs?

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

Q. 2-28 What documents does FEMA want from my insurance company?

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

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

Q. 2-29 Do I have to file a claim with my insurance company since I have to pay a deductible? Why can't FEMA just help me?

By law, FEMA cannot give you money for items that your insurance covers (this would be considered a duplication of benefits), but FEMA may be able to help with uncompensated losses or unmet needs not covered by your insurance company. If you have not already contacted your insurance agent to file a claim, please do this as soon as possible. If you do not file a claim with your insurance company, FEMA help may be limited. If your insurance company tells you that your deductible is greater than the amount of damage found, please request a letter from the insurance company, on company letterhead, and send it to FEMA, along with your application for assistance.

Q. 2-30 My insurance company told me it would be weeks before they come to see my damages. Can FEMA help?

If a decision on your insurance settlement has been delayed for more than thirty days after you filed the insurance claim, you may be eligible for an insurance advancement from FEMA. These funds are considered a loan and must be repaid to FEMA once you receive your settlement from your insurance company. You need to write a letter to FEMA, explaining the circumstances of the delay in settlement. Include documentation from the insurance company as proof of filing, or the claim number, the date filed, and an estimate of how long the settlement will take, if you filed by phone. FEMA will send you a Request for Advancement and Signature letter. You must complete and return this letter before FEMA can evaluate your request for assistance.

2.8 Late Registration

Q. 2-31 I had extenuating circumstances that prevented me from applying for assistance before the registration filing deadline. I have damages from the disaster. What can I do?

Apply anyway. You may make a late registration within sixty days after the filing deadline. A letter will be sent stating you are not eligible for consideration for disaster assistance under the Individuals and Households program. The letter will contain information on how you can appeal this decision if you had extenuating circumstances that kept you from filing during the open registration period. See IAPPG p. 70.

2.9 Returning Funds

Q. 2-32 I need to return a check or pay money back to FEMA. Where do I send it?

First, consider seeking more specific legal advice or services to evaluate whether you are correctly assessing the need to return the payment from FEMA. To apply with the Disaster Legal Services program, contact the SBOT Disaster Hotline at 1-800-504-7030. Even if FEMA demands repayment, you may wish to appeal that decision if you believe you were eligible for the funds received. When repayment is demanded after funds have been spent, you may wish to seek more information about FEMA's ability to waive repayment in certain circumstances.

Treasury Checks: If you have not cashed the treasury check and plan to return it, mail it to:
DEPARTMENT OF THE TREASURY
ATTN: Treasury Check Return

PO Box 51318
Philadelphia, PA 19115

Include your name, Social Security number, and FEMA application number on any correspondence.
(www.fema.gov/how-make-payment-fema)

Personal Checks/Cashiers Checks/Money Orders: If you have already cashed the treasury check and plan to return it, send your personal check (or money order/cashier's check) by regular mail to: FEMA, PO Box 6200-16, Portland, OR 97228-6200. For options to send payments by courier or to make payments online or by phone, seek up-to-date guidance at www.fema.gov/how-make-payment-fema. DO NOT send cash. Include a brief statement explaining why you are sending funds to FEMA. Include your name, Social Security number, and FEMA application number.

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

2.10 Road and Bridge Damages

***Q. 2-33** My home is not damaged, however a public road or bridge has been damaged and is preventing access to my home. Can FEMA help me?*

Yes. If damages to a public road or bridge prevents or restricts you from accessing your home, FEMA may be able to provide assistance. See www.fema.gov/faq-details/Road-and-Bridge-Damages/.

***Q. 2-34** If I own the bridge and/or road that is damaged, should I apply for assistance?*

Yes. If the private road or bridge damage prevents or restricts access to your home, FEMA may be able to provide assistance. FEMA IHP could cover the expenses of repairing privately owned access roads if the following criteria are met:

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

Private property owners, established homeowners associations, and properties governed by covenant may apply for a low-interest disaster loan directly through the Small Business Administration (SBA). See www.fema.gov/faq-details/Road-and-Bridge-Damages/.

***Q. 2-35** What if I share ownership and responsibility for the road or bridge with other families? Do they all need to register?*

All households who share in the responsibility of maintaining the private road and/or bridge should each register individually, particularly if the damages prevent or restrict access to their homes. See www.fema.gov/faq-details/Road-and-Bridge-Damages/.

2.11 Small Business Administration (SBA)

Q. 2-36 Why am I being referred to the SBA?

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

Q. 2-37 Does the SBA make loans to individuals or just businesses?

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

Q. 2-38 How do I reach the SBA hotline?

The SBA has loan officers in the Disaster Recovery Centers to provide face-to-face service to disaster victims. You may visit the SBA at any of these locations without an appointment. An SBA representative will be glad to answer questions and help complete your application. To find out where the SBA disaster offices are located, an applicant can call the SBA toll-free at 1-800-659-2955 or email the SBA disaster customer service at <mailto:disastercustomerservice@sba.gov>.

2.12 Travel Trailer/Mobile Home

Q. 2-39 How long can I use the travel trailer/mobile home?

If FEMA provides you with a travel trailer or mobile home, you may be able to use it for up to eighteen months from the date of declaration if you continue to have a disaster-related housing need. During some disasters, FEMA applicants may use the trailers or mobile homes beyond the eighteen-month mark, but additional requirements usually apply after that time.

Q. 2-40 My family is too large for a travel trailer/mobile home. What do we do?

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

Q. 2-41 Can I have a ramp built for a travel trailer/mobile home?

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

Q. 2-42 One of the storms damaged the travel trailer that FEMA provided me. What should I do?

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

2.13 General Questions

Q. 2-43 After the storm, the gas station up the street was charging \$10 a gallon for gas. Isn't that price gouging?

In most cases, the current price at the pump is not due to price gouging. However, the Texas attorney general is prepared to act quickly if gas prices in a governor-declared disaster area spike beyond what the normal market forces set. If you find price gouging, contact the attorney general's office. See www.texasattorneygeneral.gov/cpd/price-gouging.

Q. 2-44 When funds are provided for disaster assistance in other countries, does this affect the amount of money that is available for my state?

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

Q. 2-45 My vacation/secondary home was damaged. Can I get any help?

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

Q. 2-46 Will FEMA help me pay my utility bills?

No, FEMA cannot pay utility bills. However, local charitable organizations may be able to help for a short time. We suggest you contact the Red Cross (www.redcross.org) or your local United Way office by calling 2-1-1 for a referral to a local agency that may be able to help.

Q. 2-47 I lost my food because of the power outage; will I be reimbursed for it?

FEMA's disaster assistance program does not cover food losses. Voluntary organizations in the disaster area may be able to help you with a hot meal or other immediate needs for food. You may also qualify for assistance through the Disaster Supplemental Nutrition Assistance Program (SNAP). Call 2-1-1 to find out more information on how to apply. See www.hhsc.state.tx.us/index.shtml.

Q. 2-48 I have trees down all over my yard. Is there any help for debris removal?

Many homeowners' insurance policies cover debris removal. FEMA does not typically pay for cleaning up debris on private property or in gated communities, but if the debris is keeping you or emergency workers from safely getting to your home, FEMA may be able to provide help. Your local officials can also tell you if there is a pickup schedule for debris in your area.

FEMA may provide assistance for debris removal from private property if it will:

- eliminate immediate threats to life, public health, and safety; or

- eliminate immediate threats of significant damage to improved public or private property; or
- ensure economic recovery of the affected community to the benefit of the community-at-large.

Q. 2-49 I purchased a generator. Will I be reimbursed?

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

- The applicant must provide proof that the piece of equipment is required for medical purposes (e.g., letter from physician stating that the applicant/occupant has a medical need for the equipment).
- For more information on generator reimbursement, click the link below: www.fema.gov/media-library-data/1392312125767-5abcca185f7a96b60e4e243ae5b90bb2/Generator%20Reimbursement%20RP1002%201.pdf.

Q. 2-50 Does disaster help have to be repaid?

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

Q. 2-51 FEMA told me to send in my receipts. What is the mailing address?

Please mail all correspondences to the following address:

FEMA – Individual and Households Program
National Processing Service Center
P.O. Box 10055
Hyattsville, MD 20782-8055; or

Fax it to 1-800-827-8112; or

Upload from your personal computer to your online account at: www.disasterassistance.gov/. Click “Check Status,” and log into your account.

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

Q. 2-52 I got a check from FEMA. What can I use the money for?

FEMA sends you money to meet your housing and personal property needs related to the disaster. You will receive a letter from FEMA telling you what forms of assistance the money is intended to address.

Q. 2-53 Can I get more information about disaster assistance on the Internet?

Yes. The best place to start is www.fema.gov and disasterlegalaid.org.

Q. 2-54 I have a lot of damage, but I received a letter from FEMA stating I am getting "\$0." Why?

There are multiple bases for denial, so it is important to read the entire letter to try to understand the specific issue(s) in your case. However, the letters do not contain fact-specific explanations; rather, they contain standardized decision codes. You may seek additional information through FEMA's Helpline, and you may request that FEMA provide you with a copy of your entire FEMA file. The request is required to include the:

- Applicant's full name.
- Applicant's FEMA Application Number and Disaster Number.
- Damaged property address or current mailing address.
- Applicant's date of birth.
- Applicant's signature with either a notary stamp/seal or the statement "I hereby declare under penalty of perjury that the foregoing is true and correct."

Written requests can be mailed to FEMA Individuals and Households Program, National Processing Service Center; P.O. Box 10055; Hyattsville, MD 20782-8055 or faxed to 1-800-827-8112.

If you do not qualify for assistance, the letter will also explain your rights to file an appeal if you disagree with the reason provided by FEMA. If you wish to appeal, you must do so within sixty days of the denial date.

To apply for specific legal advice or services, you may contact the SBOT Disaster Hotline at 1-800-504-7030.

Source: This question and answer section utilizes some information provided by FEMA at www.fema.gov/faq, as well as FEMA's IAPPG and advocates' experience.

2.14 CARES Act

The CARES Act expands states' ability to provide unemployment insurance for many workers impacted by the COVID-19 pandemic, including for workers who are not ordinarily eligible for unemployment benefits. As soon as possible following becoming unemployed, contact the Texas Workforce Commission to apply for unemployment benefits. The Texas Workforce Commission can be reached by phone at 1-800-939-6631 or by email at: <https://www.twc.texas.gov/jobseekers/unemployment-benefits-services>.

FEMA does not directly disburse funds received through the CARES Act but is receiving support that is applied to its existing programs. For up-to-date information regarding the CARES Act on FEMA's operations and FEMA's response to the COVID-19 pandemic, please visit <https://www.fema.gov/coronavirus/>

For more information regarding the CARES Act, see Chapter 6. Employer/Employee Issues, and Chapter 16. Community Organizations/Small Businesses.

3.0 FALLING TREES, FLYING LIMBS & RELATED NOISES

3.1 Overview

This chapter addresses situations in which natural disasters—heavy rains, high winds, flooding, etc.—cause uprooted trees, broken tree limbs, and other like objects to damage persons or property, including noise during cleanup.

3.2 Most Common Issues/Questions

- My neighbor's tree fell into my yard during the disaster. It smashed my fence and took out my landscaping. Can I make my neighbor pay for the fence repairs and landscaping?
- What if my neighbor's tree hits my house?
- No trees came down during the disaster, but I'm sick of picking up limbs out of my yard from my neighbor's tree. I'm worried about the next storm; that tree looks awful. What can I do?
- Can I make my neighbor trim the tree branches that hang onto my property?
- My neighbors are freaking out after the disaster and want to cut down all their trees. They provide the only shade in my yard. Can I stop my neighbors?
- My neighbors had a lot of trees fall on their property. They keep running a chainsaw long after I've put my kids to bed. Can I stop them?
- The fence between my property and my neighbor's property is down. Who has to pay to replace it?

3.3 Summary of the Law

As a general rule, compensation may not be obtained for losses, damage, or harm suffered as a result of an act of God, which means an occurrence due directly and exclusively to natural causes without human intervention and which no amount of foresight or care, reasonably exercised, could have prevented (including natural disasters). “[D]amages resulting from an act of God are not ordinarily chargeable to anyone.” *Hutchings v. Anderson*, [452 S.W.2d 10](#), 15 (Tex. App.—Dallas 1970, no writ). There are, however, at least two exceptions to this general rule.

First, damage suffered by a homeowner or tenant due to high winds or rain may be covered by an insurance policy, and damage caused by flooding may be covered by a separate flood insurance policy (sold by an insurance agent and overseen by the Federal Emergency Management Agency as part of the National Flood Insurance Program.). The first question, then, is whether the homeowner or tenant has an insurance policy, and the second is, if so, whether the policy covers losses due to the specific kind of damage that has occurred (for example, damage from high winds and rain). A policy may exclude coverage for any losses from disasters altogether or may cover only some types of losses, but not others. In one case, a policy did not mention disasters specifically, but excluded from coverage any losses caused by floods and high water, “whether driven by wind or not.” That policy language prompted a fact-intensive inquiry into which damages were caused by rising waters and which were caused by wind-driven rain. *National Union Fire Insurance Co. v. Cox*, [393 S.W.2d 939](#) (Tex. App.—Houston 1965, no writ).

Second, the “act of God” doctrine applies only where a natural disaster or similar act of God is the sole or exclusive cause of the damages. *Macedonia Baptist Church v. Gibson*, [833 S.W.2d 557](#), 560 (Tex. App.—Texarkana 1992, writ denied) (“An accident is the result of an act of God when it is due directly and exclusively to natural causes without human intervention.”). It does not apply to situations in which negligence has been a substantial contributing cause of the damages, regardless of whether or not the person who is negligent could have reasonably foreseen the disaster or its force. After a homeowner successfully sued to recover for damages caused by a billboard sign that collapsed on her house during Hurricane Alicia in 1983, one Texas court stated:

[C]onditions created by the defendant’s initial negligence must not have run their course and must have actively contributed to the injuries . . . If an actor’s conduct is a “substantial factor” in causing harm to another, the fact that he did not foresee nor should have foreseen the extent of the harm or the manner in which it occurred does not preclude liability.

Gannett Outdoor Co. of Texas v. Kubezka, [710 S.W.2d 79](#), 85 (Tex. App.—Houston [14th Dist.] 1986, no writ) (citations omitted).

That court found that the billboard company’s failure to take “adequate precautionary measures” to secure the sign “actively contributed” to the sign’s falling on the house, regardless of whether the force of Hurricane Alicia had been foreseeable. *Id.* In that regard, a failure to secure objects that can reasonably be expected to be swept up in a disaster likely gives rise to liability. Similarly, the failure to take steps to remove, or at least secure, a diseased or dead tree may well make a homeowner liable for damages if the tree is uprooted by a disaster and damages neighboring property or persons.

3.4 Assistance Numbers

Federal:

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

Generally, FEMA requires private property owners to use their own resources to clean up debris from their property. Local government officials may set up various options to assist residents in collecting and disposing of debris after a disaster, including providing drop-off sites or a curbside collection program. Removal of debris by a public entity generally requires an immediate threat to life, public health, or safety and must be expressly authorized by state or local authorities. Private land owners should call 3-1-1 if they believe the city should authorize debris removal as part of the public interest, or contact local government. FEMA’s fact sheet on removal of debris from private property is available online [here](#).

State of Texas:

Texas Department of Insurance (TDI) [tdi.texas.gov](#); 1-800-578-4677. TDI offers services to consumers and insurers, including help locating insurance carriers, monitoring insurance fraud, and offering answers to Frequently Asked Questions. In addition, TDI issues important bulletins relating to disasters and post-disaster claims handling. Insurance-related complaints can be made to TDI via their website [here](#). For

questions or assistance, contact the consumer helpline at 1-800-252-3439. See TDI's website for other disaster resources.

County, City, and Debris Removal:

Bexar County bexar.org

- **City of San Antonio** sanantonio.gov
 - **Debris Removal** sanantonio.gov/swmd

Dallas County dallascounty.org

- **City of San Antonio** dallascityhall.com
 - **Debris Removal**
dallascityhall.com/departments/sanitation/pages/brush_and_bulky.aspx

El Paso County epcounty.com

- **City of El Paso** elpasotexas.gov
 - **Debris Removal** elpasotexas.gov/environmental-services/collections

Harris County harriscountytexas.gov

- **City of Houston** houstontx.gov
 - **Debris Removal** houstontx.gov/solidwaste/debris_08302017.html

Potter County co.potter.tx.us

- **City of Amarillo** amarillo.gov
 - **Debris Removal** <https://www.amarillo.gov/departments/planning-and-development-services/public-works/solid-waste-collection-disposal/bulky-item-pick-up>

Travis County traviscountytexas.gov

- **City of Austin** austintexas.gov
 - **Debris Removal** <https://austintexas.gov/department/residential-brush-collection>

3.5 FAQs

Q. 3-1 My neighbor's tree fell into my yard during the disaster. It smashed my fence and took out my landscaping. Can I make my neighbor pay for the fence repairs and landscaping?

If the tree was healthy before the disaster and the storm's high winds caused the tree to fall over and damage your property, you likely cannot hold your neighbor liable, as this damage qualifies as an "act of God." However, if the tree was decayed, diseased, dead, or in an otherwise dangerous condition before the disaster, you may be able to hold your neighbor liable for damages, because your neighbor was negligent in maintaining the tree. If the tree posed an unreasonable risk of harm, your neighbor had a duty to trim the branches or remove the tree before the storm to prevent it from falling over. *See Luther Transfer & Storage, Inc. v. Walton*, [296 S.W.2d 750](#), 753–754 (Tex. 1957) ("It is established in our law that damages resulting from an act of God are not ordinarily chargeable to anyone. However, for a defendant to be relieved of liability for an unprecedented flood, there must be no negligence on his part concurring with the acts of God to cause the damage."); *Hutchings v. Anderson*, [452 S.W.2d 10](#), 15 (Tex. App.—Dallas 1970, no writ).

Note that homeowners' insurance generally covers this type of damage.

Q. 3-2 What if my neighbor's tree hits my house?

Same as above. If the tree was healthy and it fell due to high winds during the disaster, your neighbor is likely not responsible. If the tree was in poor condition prior to the disaster, your neighbor probably should have had the tree removed or taken other reasonable measures prior to the storm. The dispute over who should cover this damage is likely one about home insurance—if your neighbor is not responsible, your insurance should cover you; if your neighbor is responsible, your neighbor's insurance should cover you. As a practical matter, it may be easier to claim on your insurance and let your insurance company pursue any claim that may exist against your neighbor.

Q. 3-3 No trees came down during the disaster, but I'm sick of picking up limbs out of my yard from my neighbor's tree. And I'm worried about the next storm; that tree looks awful. What can I do?

You can cut limbs that grow onto your property, but you cannot kill the tree. The tree owner may be responsible for removing a dead or diseased tree prior to a storm, but you cannot take on that responsibility yourself. Rather, you should inform your neighbor of the dangerous condition of the tree and request that your neighbor address the problem. If your neighbor fails to do so and you end up with damage (as in the examples above), you will likely be able to recover damages from the tree owner.

Contact your local government. Certain city departments are responsible for cleaning up neighborhoods using building codes, sign codes, nuisance violations, and beautification projects. If the city determines that the tree is dangerous, it may issue a notice requiring removal.

Q. 3-4 Can I make my neighbor trim the tree branches that hang onto my property?

No. If the tree is healthy, you can trim branches that hang onto your property up to the boundary of your property line, but you cannot make your neighbor trim them. If you trim branches, you cannot kill the tree, and if the tree dies, your neighbor can attempt to recover damages from you for trespass. If the tree is dead, diseased, or dangerous, contact local government—if the city determines that the tree is dangerous, it may issue a notice requiring removal.

Q. 3-5 My neighbors are freaking out after the disaster and want to cut down all of their trees. They provide the only shade in my yard. Can I stop my neighbors?

No. The trees belong to your neighbors, and thus are their property to do with as they wish, even if the trees provide shade to your yard or if the trees' branches hang into your yard. However, if the tree is located right on the property line itself, you may have an ownership interest that would require your approval to remove the trees. Additionally, restrictive covenants or a tree ordinance pertaining to your subdivision that protects the trees if they are a certain size may apply. Check with your homeowner's association for any applicable restrictive covenants and with your local government for any applicable ordinances.

Q. 3-6 My neighbors had a lot of trees fall on their property. They keep running a chainsaw long after I've put my kids to bed. Can I stop them?

Some cities have noise ordinances that may prevent sounds above a certain decibel level at different times. A typical chainsaw has a volume of around 100 adjusted decibels (dB(A)). Check with local government for noise requirements and time restrictions.

For example, the Houston Noise Ordinance (Section 30-5) limits noise to 65 dB(A) during daytime hours and 58 dB(A) at night. Daytime hours are defined as between the hours of 8 a.m. and 10 p.m. Nighttime hours are defined as 10:01 p.m. to 7:59 a.m. the following day. Houston, Tex., Code of Ordinances, Ch. 30, §§ 30.1, 30.5(a)(1)(2017). But even that Ordinance has two exceptions. One exception is for “emergency work,” which is defined as “any work performed for the purpose of: (i) preventing or alleviating the physical trauma or property damage threatened or caused by an emergency, (ii) restoring property to a safe condition following a fire, accident, or natural disaster, (iii) protecting persons or property from exposure to danger, or (iv) restoring public utilities.” Houston, Tex., Code of Ordinances, Ch. 30, §§ 30-1, 30-16(3)(2017). While this exception is probably intended for the city and its contractors, it is not clear and your neighbor may successfully argue that emergency work is being performed in cutting the trees.

Another exception in that Houston ordinance exists for “the operation of any mechanically powered saw, drill, sander, router, grinder, lawn or garden tool, lawnmower, or any other similar device used between the hours of 7:00 a.m. and 8:00 p.m., provided the device does not produce a sound exceeding 85 dB(A) when measured from the property line.” See Houston, Tex., Code of Ordinances, Ch. 30, § 30-16(7). The equipment must be used for the maintenance or upkeep of the property on which the equipment is being operated.

The analysis is likely the same if your neighbor is starting a new business selling firewood from all the downed trees brought to the property.

Q. 3-7 The fence between my property and my neighbor’s property is down. Who has to pay to replace it?

If a fence is located entirely on your neighbor’s property, the fence is considered to be the exclusive property of your neighbor. Consequently, unless you have entered into an enforceable agreement with your neighbor or certain deed restrictions mandate that fences be erected and divide responsibilities among neighbors, you are not obligated to fix the fence on your neighbor’s property, nor can you compel your neighbors to fix their fence. On the other hand, if the fence is on your property, it is your responsibility to fix it, though your neighbor cannot compel you to replace the fence. If the fence was originally installed on your neighbor’s property but fell on to your property as a result of the storm, you can remove the fence from your property in the same way you can move trees and limbs from your property.

If the fence is on the boundary line between both properties, both property owners own the fence as long as both “use” it, unless an agreement indicates otherwise. Thus, you and your neighbor would share the cost of repairing and replacing the fence. Check local ordinances for the applicable definition of “use.”

4.0 LANDLORD/TENANT ISSUES

4.1 Overview

This chapter focuses on Texas statutory and common law regarding the rights of landlords and tenants with respect to residential leases. Be wary of relying on resource materials that may include general statements of what the law usually is across the nation, as Texas law is quite different from the laws of other states, particularly regarding statutory landlord-tenant law.

4.2 Most Common Issues/Questions

- Is a tenant entitled to terminate a lease if the dwelling is completely or partially unusable?
- What recourse does a tenant have if she cannot pay rent because of a lost job or wages?
- What should a tenant do if a landlord tries to evict the tenant following the disaster?
- Does a tenant have any right to recover against any party, including a landlord or neighbor, because of personal property loss or damage?

4.3 Summary of the Law

The landlord-tenant relationship in residential leases is governed almost exclusively by section 92 of the Texas Property Code. Issues not covered by the Property Code are covered by the common law. The Property Code thoroughly addresses most situations that can arise between a landlord and tenant, e.g., a landlord's duty to repair; when and under what circumstances a tenant may resort to self-help in getting repairs; when and under what circumstances a tenant or landlord may terminate the lease. Subchapter B of the Property Code, Repair or Closing of Leasehold, contains many of the provisions relevant to dealing with a disaster situation.

The Property Code is very lengthy and complex. Callers should be strongly discouraged from taking actions until they thoroughly understand their rights under the Property Code, especially as they relate to withholding rent (which they should never do) and/or terminating the lease. If the provisions of the Property Code, e.g., notice provisions, are not followed precisely, the party not following the provisions (either landlord or tenant) may not be able to use certain rights and remedies and could be held liable for damages, attorney's fees, and civil penalties.

It is also important to note that in their leases the parties may contract away certain rights or otherwise modify the landlord-tenant relationship. Of course, there are many tenant rights in the Property Code that the parties cannot waive. For example, the duty to repair under subchapter B can be waived only in very limited circumstances. Tex. Prop. Code § 92.006(d)–(f). Other

examples of nonwaivable rights include tenant rights regarding security deposits, security devices, landlord's disclosure of ownership, and utility shutoffs, Tex. Prop. Code §§ 92.006(a), 92.006(h); tenant rights to summon police, Tex. Prop. Code § 92.015(b)(1); tenant rights regarding the right to vacate following family violence, Tex. Prop. Code § 92.016(g); tenant rights regarding illegal late fees, Tex. Prop. Code § 92.019(d); and rights regarding rental applications, Tex. Prop. Code § 92.355. Nevertheless, a good starting point in answering a landlord-tenant question is the lease between the parties.

Commercial leases are governed primarily by the common law (although section 93 of the Property Code addresses some aspects of a commercial tenancy, e.g., interruption of utilities, removal of property, and exclusion of the tenant). Parties to commercial leases are given wide latitude in crafting their agreements in any way so long as the terms violate no law or important public policy. Therefore, the lease document will almost exclusively govern the relationship. If a particular situation is not expressly contemplated or addressed by the lease, then the relevant case law and rules of contract construction will apply.

Self-help evictions of tenants are illegal in Texas. A landlord must go through the eviction court process that starts in justice court. Evictions begin with a notice, followed by a lawsuit in justice court, a hearing, an appeal to county court if necessary, and finally a writ of possession (order to remove the tenant) if the tenant has not moved out. (See Q. 4-12 below.) Of course, tenants can always choose to permanently leave the unit in response to a notice to vacate or threat of eviction from a landlord. There are also limited circumstances under which a landlord may change the locks to a unit for necessary repairs or when a tenant is behind on rent (and if the lease allows it), but the landlord must always provide a new key or access to the property and must make sure to follow strict notice requirements. Tex. Prop. Code § 92.0081.

Appeals from Eviction for Nonpayment of Rent

See Tex. R. Civ. P. 510.9; Tex. Prop. Code §§ 24.00511, 24.00512, 24.0052, 24.0053, 24.0054.

To appeal an eviction judgment in the justice court, the tenant must, within five calendar days (including weekends and holidays) of the court's judgment, either (1) file an appeal bond with a good surety in the amount set by the judge, (2) make a cash deposit with the justice court for the amount of the appeal bond, or (3) file a statement of inability to afford payment of court costs stating that the tenant is financially unable to pay the appeal bond or make the cash deposit. In addition, if the tenant is appealing by filing either an appeal bond or a statement of inability to afford payment of court costs and a reason for the eviction is nonpayment of rent and the tenant wants to stay in possession during the appeal, the tenant must pay one rental period's rent into the justice court registry within five days of filing the appeal bond or the statement. If the tenant fails to timely make this payment, the landlord may ask the justice court for a writ of possession and have the tenant removed from the property. Even if that happens, the appeal continues and will still be sent up to the county court.

Also, if the tenant files a statement of inability to afford payment of court costs as an appeal in a nonpayment of rent case, the tenant must pay future rent into the county court at law registry each rental period within five days of its due date under the lease. If the tenant fails to pay this

rent payment on time, the landlord may file a sworn motion with the county court and set a hearing to ask the court to issue a writ of possession and have the tenant removed from the residence.

Eviction from Temporary Housing Such as Hotels

Individuals living in temporary housing such as a hotel may be considered guests rather than tenants and may be subject to self-help methods such as lock changes or peaceable removal by the hotel owner without a court proceeding. In such cases, the hotel owner is not required to file an eviction case and obtain a writ of possession. If such a guest refuses to leave, the police may decide to handle the matter as a criminal trespass.

However, sometimes people have longer-term stays in hotels, so whether an individual is a tenant (requiring an eviction lawsuit) or a guest (not requiring an eviction lawsuit) depends on the facts, regardless of what it is called in a lease or contract. There is no bright line, but there are factors that may indicate whether an individual is a tenant or a guest.

The chart below illustrates some helpful factors to consider in determining what type of relationship exists. There is no magic number of answers that renders a relationship a landlord-tenant relationship.

Question	More likely a guest	More likely a tenant
How long has the occupant stayed there?	A few days or weeks	Longer than a month
What are the terms of the contract signed?	Standard hotel occupancy agreement	Appears more like a residential lease, e.g., restrictions on guests
How often does the occupant pay to stay there?	Nightly	Monthly
Does the occupant receive mail at that address?	No	Yes
Does the motel/hotel provide cleaning service and towels?	Yes	No
Does the occupant have exclusive control over the unit?	No; cleaning staff routinely enter	Yes; no one else regularly enters the unit

The answers to these questions do not automatically determine whether an individual is a tenant or guest. But the more factors weigh in favor of the individual’s being a tenant, the likelier it is that a judge would find that that the occupant is entitled to the protections of tenants, including the prohibition on lockouts and the requirement that a landlord go through the formal eviction process. (The eviction process is described in Q. 4-12 below.)

Tenant’s Remedies Regarding Revocation of Certificate of Occupancy

Tex. Prop. Code § 92.023 states that a landlord who has the certificate of occupancy revoked for his leased premises is liable to a tenant not in default for (1) the full amount of tenant’s security deposit; (2) a pro rata portion of any rental payment paid in advance; (3) tenant’s actual

damages, including any moving costs, utility connection fees, storage fees, and lost wages; and (4) court costs and attorney's fees from any related action against the landlord. This law applies only to leases entered into on or after September 1, 2011.

Repair Orders in Justice Courts

Tex. Prop. Code § 92.0563 and Tex. R. Civ. P. 509.1–.9 set forth procedures for suits filed in justice court by tenants requesting relief regarding the repair of residential rental property. Justice courts can order repairs to leased premises, order a reduction in the tenant's rent, award a civil penalty of one month's rent plus \$500, and assess actual damages to the tenant. The total judgment can be up to \$10,000, excluding interest and court costs but including attorney's fees. This jurisdictional limit increases to \$20,000 on September 1, 2020.

Tenant's Right of Restoration after Unlawful Utility Disconnection

The Texas Legislature has repealed provisions that permitted residential landlords to interrupt utility service for nonpayment of rent, and Tex. Prop. Code § 92.0091 creates an expedited procedure for the justice court to issue an ex parte writ of restoration, ordering the utilities immediately reconnected. A landlord's failure to comply is grounds for contempt (Tex. Gov't Code § 21.002), punishable by a fine and confinement in county jail. The landlord is entitled to request a hearing within seven days after the service of the writ.

However, under certain circumstances a landlord may interrupt electric utilities for the nonpayment of electric bills by interrupting electrical service for submetered (meters in individual tenant spaces) or allocated nonsubmetered spaces, and the law includes a complex process of notices and exceptions. *See* Tex. Prop. Code § 92.008.

Landlord's Duty to Name All Occupants in an Eviction Suit

If an eviction is based on a written lease, then a landlord must sue, by name, all tenants who are obligated under the lease. If the landlord does not name each person who is obligated under the lease, those not named cannot be evicted and a writ of possession cannot be issued against those persons. Tex. R. Civ. P. 510.3(c).

4.4 Landlord-Tenant Law and Issues during COVID-19

Tenant Evictions during the COVID-19 Pandemic

During the COVID-19 pandemic, the Texas Supreme Court temporarily halted eviction cases, but the Court has now lifted its moratorium effective May 19, 2020. The Court's *Fifteenth Emergency Order Regarding the COVID-19 State of Disaster* states that “[b]eginning May 19, 2020, eviction proceedings may resume and deadlines are no longer tolled, and beginning May 26, 2020, warnings may be posted and writs of possession may be executed.” However, local governments and some trial courts have suspended residential evictions for longer than did the Texas Supreme Court, and some local governments have imposed additional requirements, such as delaying the issuance of a notice to vacate or requiring a notice of opportunity to cure nonpayment before filing an eviction case. For lists of local actions to halt evictions, see:

- <https://texaslawhelp.org/article/evictions-during-covid-19-pandemic>, or

- <https://sites.utexas.edu/covid19relief/tenant-protections/>

These local laws do not allow a tenant to avoid paying rent; they may only delay the time by which rent may be paid. Communication with the landlord is important and may allow the parties to come to an agreement. If a tenant is unable to pay part or all the rent, the landlord might accept a delayed payment until stimulus check, unemployment, or other aid is received. Tenants can apply for rental assistance by calling 211, the United Way helpline, or other organizations such as Catholic Charities. For a list of local organizations that might be able to assist with some housing needs and expenses, see <https://www.211texas.org/>, or <https://www.tdhca.state.tx.us/texans.htm>.

Lockouts for Nonpayment during COVID-19

A landlord can prevent a tenant from entering the property for nonpayment only if that person is in the lease and the landlord gives the tenant specific notices, but the landlord must ALWAYS give the tenant a key and access to the property upon request, even if the tenant has not paid the rent. If a landlord refuses to grant access or give the tenant a key, the tenant can file a request with a justice court for the issuance of a writ of reentry, which orders the landlord to allow the tenant back into the property. The writ of reentry is served on the landlord by a sheriff or constable, who may use reasonable force to enforce the writ. *See* Tex. Prop. Code § 92.009.

CARES Act Protections for Tenants

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law No. 116-136, full text available at <https://www.congress.gov/bill/116th-congress/house-bill/748>. Renter protections are at §§ 4023(d), 4024.

The CARES Act offers renters who live at “covered properties” (see list below under CARES Act FAQs) several protections for a temporary period of 120 days. It is estimated that approximately 30 percent of renters live in covered properties. Landlords of covered properties are temporarily prohibited from filing evictions for nonpayment of rent or charging late fees or penalties for late payment of rent for a period of 120 days, from March 27 until July 25, 2020. During this period, landlords cannot issue notices to vacate for nonpayment.

In addition, the CARES Act prohibits evictions from any apartment complex that takes advantage of the CARES Act mortgage forbearance program. This means that if a tenant lives in a multifamily building that has requested and received a forbearance of its mortgage payments, the landlord cannot evict a tenant for unpaid rent, or charge late fees, penalties, or other charges for late payment of rent, so long as the forbearance is in place. After the forbearance period, the landlord must give the tenant at least 30 days’ notice to vacate.

On May 14, 2020, the Texas Supreme Court included in its *Fifteenth Emergency Order Regarding the COVID-19 State of Disaster* the requirement that a landlord include in any eviction case filed from March 27, 2020, through July 25, 2020, a statement in its sworn petition that the “premises are not subject to the moratorium on evictions imposed by Section 4024 of the CARES Act.” So in residential evictions through July 25, 2020, all landlords in Texas are required to swear that the tenant is not protected by the CARES Act.

CARES Act FAQs:

If I live at a “covered property,” do I still need to pay my rent?

Regardless of whether you live in a covered property, you should continue to pay your rent in full and on time, if you can. If you can't pay rent right now, talk to your landlord about your situation. When you can afford to pay full rent again, you should do so. *Note:* The CARES Act does not forgive your obligation to pay rent. If you don't pay your rent, you can still be evicted—just not right away. To evict you, your landlord must file an eviction case in justice court in the precinct where you live.

What is a “covered property” under the CARES Act?

“Covered properties” include properties that have federally backed mortgages. These include mortgages backed by the Department of Housing and Urban Development (HUD), Department of Veterans Affairs (VA), Department of Agriculture (USDA), and the government-sponsored enterprises known as Fannie Mae and Freddie Mac.

Covered properties also include properties that participate in the housing programs below. The largest are public housing, Housing Choice Vouchers, Project-Based Section 8 housing, and the Low-Income Housing Tax Credit program.

- Public housing
- Section 8 Housing Choice Voucher program
- Section 8 project-based housing
- Low-Income Housing Tax Credit (LIHTC) program
- Section 202 housing for the elderly
- Section 811 housing for people with disabilities
- Section 236 multifamily rental housing
- Section 221(d)(3) Below Market Interest Rate (BMIR) housing
- HOME
- Housing Opportunities for Persons with AIDS (HOPWA)
- McKinney-Vento Act homelessness programs
- Section 515 Rural Rental Housing
- Sections 514 and 516 Farm Labor Housing
- Section 533 Housing Preservation Grants
- Section 538 multifamily rental housing
- USDA Rural Housing Choice Voucher program

How do I know whether I live in a covered property?

Check your lease documents. They should state if your property participates in one of the housing programs in the list above. If you don't know, ask your landlord if his mortgages are backed by a federal agency (HUD, VA, USDA), Fannie Mae, or Freddie Mac. You can also search the following sources:

- Texas RioGrande Legal Aid map for CARES Act covered properties in Texas: <https://www.trla.org/housing-covid19>: search a property
- The National Low Income Housing Coalition's database of covered multifamily properties: <https://www.nlihc.org/federal-moratoriums>. (*Note:* This database does not cover single-family properties with 1–4 units and does not reflect all

- multifamily properties with Fannie Mae and Freddie Mac mortgages.)
- Databases to determine whether a multifamily property has a Fannie Mae or Freddie Mac mortgage on resources released by the Federal Housing Finance Agency. (*Note:* These tools do not cover single-family properties with 1–4 units.)
 - Fannie Mae: <https://www.knowyouroptions.com/rentersresourcefinder>
 - Freddie Mac: <https://myhome.freddiemac.com/renting/lookup.html>
 - The National Housing Preservation Database of multifamily properties with certain federal subsidies: <https://preservationdatabase.org/>. (*Note:* Not exhaustive.)

Can my landlord file an eviction even if I’m a tenant in a covered property?

No, these landlords cannot file evictions against tenants for nonpayment of rent or nonpayment of other fees or charges for 120 days after the effective date of the Act. This means that landlords of covered properties cannot file nonpayment evictions between March 27 and July 25, 2020.

If I live in a covered property, can my landlord charge late fees for late payment or nonpayment of rent?

No, these landlords cannot charge “fees, penalties, or other charges” related to nonpayment of rent for 120 days, from March 27 to July 25, 2020.

If I live in a covered property, can my landlord give me a notice to vacate?

Not for nonpayment of rent or other charges, for 120 days after the Act takes effect (between March 27 and July 25, 2020). *Note:* Your landlord still can issue a notice to vacate for a reason *not* related to nonpayment.

What happens after the Act expires on July 25?

After July 25, 2020, landlords can issue notices to vacate. But they must give at least 30 days’ notice that you have to leave. That means that for a covered property, the soonest your landlord could give you a notice to vacate for nonpayment would be July 26, and the soonest the notice would tell you that you have to leave is August 25.

Denial of Housing Due to COVID-19 Illness or Exposure

The Fair Housing Act prohibits discrimination based on disabilities. A housing provider may not inquire about a person’s actual or perceived disability, which could include infection or exposure to COVID-19. A landlord cannot deny housing to a person or ask a tenant to move out or otherwise treat that person differently because they may have a disability, which could include COVID-19, or for exhibiting symptoms associated with the disease (e.g., a tenant overhears another tenant coughing in their unit). Additionally, tenants cannot be evicted because they sought emergency medical assistance (e.g., calling an ambulance) for a disability, which could include COVID-19.

Maintenance of Property during COVID-19

Property owners are responsible for maintaining their property in accordance with the requirements of the Texas Property Code, which requires that owners repair any conditions that materially affect the physical health or safety of tenants or the availability of hot water in the

unit. Habitability standards also include health and safety standards that may be imposed by a local municipality or county. Before entering a tenant's unit, a property owner may ask the tenant a series of questions about their health, travel, and work but should advise the tenant that answering is optional. Tenants are not required to provide personal health information to landlords or to answer health or screening questions; however, property owners may choose to take additional safety measures based on tenant responses.

Reasonable Accommodations Due to COVID-19

Falling ill to COVID-19 or being exposed to the virus and quarantined could be recognized as a disability for reasonable accommodation purposes under the Fair Housing Act. For example, if a tenant becomes ill with COVID-19 and needs help caring for herself, she may be able to terminate her lease without penalty. The tenant should notify the landlord in writing, text, or e-mail that she is asking for an accommodation for her disability.

Homeless Access to Services during COVID-19

The Texas Homeless Network (<https://www.thn.org/>) provides links to free and reduced-cost services like medical care, food, and housing and a statewide COVID-19 resource page to assist homeless service providers' response to the pandemic with links from federal partners at HUD and local agencies.

Public Utility Commission Program during COVID-19

Electric customers unable to pay their bill due to effects of COVID-19 (e.g., loss of wages) should contact the Low-Income List Administrator (LILA) at the Public Utility Commission (PUC) to enroll in a new relief program adopted by the PUC. Customers can apply by calling 866-454-8387. They will then be compared with an electric company's customer list to determine eligibility. If deemed eligible, a selective moratorium on disconnections will be placed on the customer's account. Main PUC phone: 512-936-7000; Assistance Hotlines: 888-782-8477 or 512-936-7120.

COVID-19 Information and Assistance Websites

Disability Rights Texas:

<https://www.disabilityrightstx.org/en/handout/covid19reenterquestions/>

National Low Income Housing Coalition: <https://nlihc.org/federal-moratoriums>

Rental, Utility Assistance, etc.: <https://www.211texas.org/> (or call 211 locally)

Texas Department of Housing and Community Affairs:

<https://www.tdhca.state.tx.us/covid19.htm>

Texas Homeless Network: <https://www.thn.org/>

Texas Law Help.org: <https://texaslawhelp.org/article/evictions-during-covid-19-pandemic>

4.5 Assistance Numbers

American Red Cross Disaster Services Relief Hotline	1-800-RED-CROSS
Better Business Bureau	713-868-9500
FEMA	1-800-621-3362
State Bar of Texas Legal Disaster Hotline	1-800-504-7030
Texas Department of Insurance Consumer Helpline	1-800-252-3439
Texas Attorney General	1-800-252-8011
Legal Aid:	
Legal Aid of Northwest Texas	1-888-529-5277
Lone Star Legal Aid	1-800-733-8394
Texas RioGrande Legal Aid	1-888-988-9996

4.6 FAQs – General

Q. 4-1 What are my rights if I want to terminate my lease on my dwelling, following the disaster?

Section 92.054 of the Texas Property Code provides that if the rental premises are as a practical matter totally unusable for residential purposes and if the loss is not caused by the negligence or fault of the tenant, a member of the tenant’s family, or a guest or invitee of the tenant, either the landlord or the tenant may terminate the lease by giving written notice to the other at any time before repairs are completed. If the lease is terminated under this section of the Property Code, the tenant is entitled to a pro rata refund of rent from the date the tenant moves out and to a refund of any security deposit otherwise required by law. Tex. Prop. Code § 92.054(b).

Q. 4-2 If the premises are totally unusable because of the disaster, do I have to permanently move out even though I want to stay?

Most likely yes. If the premises are unfit for human habitation, there is a likelihood that a government agency, e.g., the local building department, will declare the premises off limits for residential use. Also, the landlord and tenant can terminate a lease if the rental premises are totally unusable as a result of a casualty loss (see Q. 4-1 above). Additionally, Tex. Prop. Code § 92.055 allows the landlord to “close the rental premises” by giving written notice by certified mail, return receipt requested, to the tenant, the local health officer, and the local building

inspector stating that the landlord is terminating the tenancy as soon as legally possible. (This provision of the Property Code is less frequently used in natural disasters, because it is a more cumbersome process and the landlord cannot re-rent the unit within six months. Also, it requires that the lease contains a provision allowing the landlord to do this, thus making it “legally possible.”) On proper notice, the lease would be terminated. It is unclear exactly how much time a tenant has to move out once proper notice is given. However, it is most likely to be as soon as is reasonably practical. Of course, if it is only the landlord terminating the lease (and not a government official condemning the unit), and the tenant has not moved out, the landlord may not use self-help to remove the tenant. The landlord must still go through the judicial eviction process to remove the tenant from the unit. (See Q. 4-12 below.)

The relief available to a tenant in these situations will depend on how the landlord has terminated the tenant’s lease and whether the tenant has given the landlord a written request for repairs. If the landlord uses section 92.054 (see Q. 4-1 above) to terminate the tenant’s lease, then the tenant is entitled to a pro rata refund of rent from the date the tenant moves out and a refund of the security deposit. If the landlord closes the premises per section 92.055, and the tenant has given a repair notice and moves out before the end of the lease term, the tenant is entitled to actual and reasonable moving expenses, a refund of a pro rata portion of rent, and return of the security deposit as well as a judgment of actual damages, civil penalties, court costs, and attorney’s fees. Tex. Prop. Code § 92.055(c), (d). If the landlord closes the premises per section 92.055, and the tenant has not given a repair notice, the tenant cannot get the remedies in section 92.0055(c) or (d).

In short, if the tenant has not given a notice of termination pursuant to section 92.054 (see Q. 4-1 above), has not received a termination notice from the landlord, and is not certain of the status of the unit, it is important to immediately send the landlord a proper notice of repair (as described in answer to Q. 4-4 below). That will not only set up possible repair remedies pursuant to section 92.0563 of the Property Code (described in answer to Q. 4-4 below), but may also give the tenant additional remedies if the landlord chooses to close the premises under section 92.055 of the Property Code.

Q. 4-3 If the dwelling is partially unusable because of the disaster and if I don’t want to permanently move out, can my rent be partially abated (temporarily reduced)?

Maybe. The tenant can get the reduction only by a judgment in a county or district court or by agreement with the landlord. Tex. Prop. Code § 92.054(c) provides if the rental premises are partially unusable for residential purposes and if the loss is not caused by the negligence or fault of the tenant, a member of the tenant’s family, or a guest or invitee of the tenant, the tenant is entitled to reduction in the rent in an amount proportionate to the extent the premises are unusable because of the casualty, *but only on judgment of a county or district court*. A landlord and tenant may agree otherwise in a written lease, and many leases waive a tenant’s right to get this rent reduction. Of course, since the tenant has the right to a rent reduction in these circumstances (assuming the lease has not waived that right), the tenant should attempt to negotiate a written agreement with the landlord, since Tex. Prop. Code § 92.005 allows the tenant to recover attorney’s fees if the tenant prevails in a lawsuit for such a reduction.

Q. 4-4 My current unit is uninhabitable due to a disaster, but my landlord has another available. Is the landlord required to make the other unit available? Can the landlord make me sign another lease contract extending the length of my lease in order to move to the new unit?

No. Neither the landlord nor the tenant has any obligation with respect to other available housing unless expressly set forth in the lease. However, according to Tex. Prop. Code § 92.062, if—due to a disaster—you move to another unit owned by your landlord, your landlord cannot make you sign a new lease extending your lease term past the original end date.

Q. 4-5 Do I have to keep paying rent to my landlord while I am not living at my house/apartment?

Yes, unless and until the lease is terminated (by the tenant or landlord) or the tenant has an agreement with the landlord to do otherwise (in writing, to protect the parties). Unless the rental premises are as a practical matter totally unusable for residential purposes (see Q. 4-1 above), a tenant will generally not be excused from paying rent while not occupying the premises. However, the tenant may be entitled to a rent reduction. (See Q. 4-3 above.) This is true even in a case where authorities have “asked” residents not to return to an area because of the effects of a recent disaster. (This may change, however, in the event the authorities permanently forbid residents from returning to the area.)

Q. 4-6 What can happen and what should I do if I cannot pay the rent on my dwelling because of job or salary interruptions following the disaster?

Temporary government rent assistance may be available from the Federal Emergency Management Agency (FEMA) or other governmental agencies. Disaster Unemployment Assistance (DUA) may be available to you if you do not qualify for standard Unemployment Insurance (UI), are unemployed as a direct result of the disaster, are able and available to work, file an application for DUA within thirty days of the date of announcement of the availability of DUA, and have not refused employment in a suitable position.

If you live in public or federally subsidized housing or receive Section 8 assistance, you are entitled, in most circumstances, to have your rent reduced when you suffer a loss in income. You must notify your landlord or the housing authority.

If your lease is terminated by your landlord because the premises are *totally* unusable, you will need to move out to avoid an eviction case in justice court—regardless of whether you can or cannot pay the rent. Of course, if you do not leave, the landlord cannot use self-help to remove you—the landlord will have to file an eviction case against you in court and seek an order to remove you. If the premises are only *partially* unusable and if you don’t pay the rent, you may need to move out—unless you and your landlord agree otherwise. If the landlord is entitled to evict you and you do not move after the landlord has given you notice to vacate, you can be evicted only through a justice of the peace court eviction lawsuit.

Q. 4-7 How could I pay rent if I wanted to?

It is recommended that you contact your landlord to determine what methods of payment may be viable. Should you be unable to successfully contact your landlord, sending a personal check via certified mail to the address set forth in the lease agreement or the last provided address, if different, is advisable. Depending on the landlord, it may also have a website and have payment or other information related to the disaster on such site.

Q. 4-8 Can my landlord rent my home/apartment to someone else while I am gone?

No. The landlord must honor the lease unless the dwelling is *totally* unusable or the lease contains an express provision allowing the landlord to terminate in event of a fire, flood, or similar casualty. If the landlord wants you out in order to move someone else in, then the premises are obviously not “totally unusable” and the landlord cannot terminate the lease. If the landlord unlawfully locks you out, you should contact the justice of the peace about a writ of re-entry. This is an expedited process through which you can get back into your home the same day.

Q. 4-9 How do I contact my landlord?

It is advisable to try every means of communication available, including, but not limited to: telephone calls to every available phone number, e-mail correspondence, and letters sent via mail to the address set forth in the lease agreement or last provided address, if different. Depending on the landlord, it may also have a website and have contact or other information related to the disaster on such site. The tenant should document all efforts and attempts to contact her landlord.

Q. 4-10 My landlord told me to move out because the dwelling is totally unusable after the disaster. Do I have to move out?

If, following the storm, the dwelling is as a practical matter totally unusable for residential purposes, the landlord may terminate the lease by giving written notice to the tenant at any time before repairs to the dwelling are completed. If the dwelling is unusable and the lease is so terminated, the tenant must vacate the dwelling, or the landlord may file an eviction case in justice court. (See also Q. 4-1, 4-2 above.) If the landlord terminates the lease for an unusable dwelling, the tenant is entitled to a pro rata refund of rent from the date the tenant moves out and a refund of any security deposit otherwise required by law. Tex. Prop. Code § 92.054(b). However, if the tenant disagrees that the dwelling is totally unusable for residential purposes and does not leave, the landlord cannot remove the tenant from the unit and must instead file an eviction case in justice court. Once in court, the tenant can raise as a defense that the dwelling is not totally unusable and should not have been subject to a lease termination. Of course, the tenant should continue to pay rent on the unit in the meantime, since nonpayment could be grounds for the landlord to evict the tenant.

Q. 4-11 My landlord told me to move out the next day because he wants the dwelling for his daughter who lost her house in the flood. He told me if I didn't move out, he'd change the locks. Do I have to move out?

No. The landlord must continue to honor the terms of the lease. The landlord may not change the locks to prevent the tenant from entering the dwelling for such a reason. Tex. Prop. Code § 92.0081. Also, while there are other reasons why a landlord might be able to change your locks, your landlord must ALWAYS give you a key upon request. If your landlord illegally locks you out and refuses to give you a key, you can sue in justice court for an immediate order (“writ of reentry”) allowing you back in your residence. Tex. Prop. Code § 92.009.

Q. 4-12 What should I do if I am served with an eviction lawsuit?

A landlord cannot use self-help to remove a tenant from your apartment, nor can the landlord use the police or law enforcement to assist in the tenant’s removal without a final eviction order (writ of possession) issued by a judge. Even if the landlord has properly terminated a lease because of a natural disaster, the landlord cannot remove a tenant without going to court.

To evict a tenant, the landlord must file an eviction lawsuit in justice court in the precinct where the property is located. Then the eviction lawsuit is served on the tenant, which means that a citation and petition for eviction citation will be delivered to the tenant. If the tenant cannot be found for service, then the judge may authorize another means of service of the lawsuit, including slipping it under the door, taping it to the front door, and mailing it. If the tenant is served with an eviction lawsuit, the tenant should carefully read the citation and look for deadlines, including the trial date in court. If the tenant ignores the eviction lawsuit, she will not know of the trial date, and she will likely lose the case by default. If you want to find out if an eviction case has been filed against you, you should call the justice court in the precinct where the property is located. If you do not call the correct court, the clerk will often be able to direct you to the court where the property is located.

At the trial, the tenant will have the opportunity to tell the judge her side of the story. The tenant can tell the judge about any defenses to eviction she might have, for example: the property is still livable; the landlord did not properly terminate the lease; the landlord did not give a notice to vacate after terminating the lease; or the landlord is retaliating against the tenant for asking for repairs. A judge can order the tenant’s eviction for violating the terms of her lease (e.g., not paying rent) or after the landlord properly terminated the lease and gave a subsequent notice to vacate. If the tenant lives in public housing, federally subsidized housing, or a tax credit property, the landlord must have good cause (like serious violations of your lease) to terminate or not renew the tenant’s lease, and there may be other rights such tenants may have, such as access to a grievance procedure.

Q. 4-13 How can I recover my personal property from the leased premises?

It depends. If FEMA and federal security officials are in control of when and how evacuees are allowed to return to their homes, you may have to wait to return. If there are no such limitations on your return, you can go and recover your personal property from the leased premises.

Between evacuation and when the agencies permit a return, the best advice we can give an evacuee is to try to contact the landlord and determine whether the landlord (1) knows anything about the condition of the property and (2) has been able to do anything to secure the property.

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

Q. 4-14 May I recover damages against my landlord for injuries or property damage I suffered as a result of the disaster?

When the injury or property damage results from a natural disaster and not from the landlord's negligence, the landlord is not liable for such injury or property damage. However, the Texas Property Code does not prevent claims made under existing common law and other statutory law, including against the landlord for injuries or property damage resulting from the landlord's negligence. *See* Tex. Prop. Code § 92.061. The landlord can therefore be sued if the landlord's negligence caused or contributed to the tenant's injuries or damage from the disaster. Negligence occurs when a person fails to take reasonable precautions and that failure causes damage.

Q. 4-15 I have suffered personal injuries or loss or damage to my personal belongings from the disaster. May I recover damages against my landlord or the previous homeowner if they knew about the possibility of flooding and failed to inform me?

If the landlord or seller made an affirmative misrepresentation concerning the possibility of flooding, the tenant or buyer may be able to sue the landlord or seller for fraud to recover for property damages or personal injuries. If you knew, however, that the property could flood or did not rely on the affirmative misrepresentation, then you will not be able to recover damages.

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

Q. 4-16 Can I recover damages against my landlord or the previous homeowner if they didn't know about the possibility of flooding?

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

4.8 FAQs – Am I Covered by Insurance?

Q. 4-17 All of my personal belongings were destroyed at the place I rent. What help can I get from my insurance company?

If you had renter's insurance or homeowner's contents insurance at the time of the storm, contact your insurance company. If your situation is desperate, make sure you describe your situation to the insurance company. If the insurance company agrees that there is coverage, you can ask for advance payment to cover a part of your loss.

Emergency assistance may be available from local volunteer agencies (e.g., Red Cross, Salvation Army, United Way).

Q. 4-18 What should I do if I do not have insurance on my personal belongings?

If your losses are not covered by insurance, you may be able to receive money from FEMA for "Other than Housing Needs." This assistance is available for necessary expenses and serious needs caused by the disaster. You may also wish to contact the Red Cross, which may be able to help you.

Q. 4-19 If my personal belongings are lost or damaged as a result of the hurricane, flood, or other disaster, may I recover damages from my landlord under the landlord's hazard insurance policy?

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

However, if the damage or loss of the tenant's property is due in whole or in part to the landlord's negligence, the tenant may be able to sue the landlord and the loss may be covered by the landlord's liability insurance carrier. Negligence occurs when a person fails to take reasonable precautions and that failure causes damage.

Q. 4-20 Is flood damage to my home covered under my insurance policy?

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

Flood insurance may be purchased from the federal government under the National Flood Insurance Program (NFIP). You can buy policies from any state-licensed local agent if your community is participating in the NFIP. There is usually a thirty-day grace period after purchasing flood coverage until it goes into effect. Visit <https://www.fema.gov/media-library/assets/documents/272?id=1404> for information and Frequently Asked Questions.

Q. 4-21 Does my automobile insurance cover the damage to my car resulting from the disaster?

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

Q. 4-22 May I recover damages against my neighbor whose property damaged my property during the disaster?

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

Q. 4-23 What can I do with someone else's property, which the disaster carried onto my land?

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

Q. 4-24 May I sue the local, state, or federal government for damages caused by the disaster?

Under some circumstances, the government may have liability if its employees were negligent and caused the damages. However, under the doctrine of "sovereign immunity," governmental authorities are generally immune from liability for the negligent acts of their agents and employees. The doctrine of sovereign immunity normally applies to "governmental functions" such as crime prevention, flood control, firefighting, preservation of health, etc.

Q. 4-25 What about my commercial lease?

In commercial leases, the Texas common law has not been preempted by statute, but the answer to this question is commonly addressed by the terms of the lease. Therefore, you must review the provisions, preferably with an attorney if possible, to determine the scope of your rights and obligations.

Q. 4-26 Must I continue paying rent for my commercial lease space (office, retail, ministorage, etc.) even though it has been rendered totally or partially unusable by the disaster?

The particular provisions of a commercial lease will control whether rent must be paid following a complete or partial destruction of the space. If the terms of the lease do not address casualty, then for a lease of space such as office space, retail space, or ministorage space (but not for a lease of land), if the storm rendered the space unusable for its intended purpose, the lease is terminated and the tenant is relieved of its obligation to pay rent following the destruction.

Norman v. Stark Grain & Elevator Co., 237 S.W. 963, 966 (Tex. App.—Dallas 1922, writ ref'd).

5.0 REAL AND PERSONAL PROPERTY

5.1 Overview

In the summaries and Q&A discussion below, we have tried to anticipate some of the practical questions that homeowners, tenants, and business owners might ask concerning real and personal property issues.

Note, regarding the scope of this section: we do not address the mechanics of making insurance claims or the legal issues related to insurance claims.

Disaster Remediation Contracts

Sections 58.002 and 58.003 of the Texas Business and Commerce Code regulate the actions of disaster remediation contractors who do not maintain offices within a county or adjacent county where a natural disaster occurred. Unless a disaster remediation contractor has an established office in the county or adjacent county where a property is located for at least one year prior to the contract, a disaster remediation contractor cannot require full or partial payment before beginning work and may not require a partial payment in an amount that exceeds an amount reasonably proportionate to the work performed, including any materials delivered. A contract subject to this chapter must be in writing.

Continuation of Homestead Exemption While Replacement Structure Is Constructed

Tex. Tax Code § 11.135 allows a homeowner to continue to receive a homestead exemption for the structure and the land and improvements used in the residential occupancy of the structure rendered uninhabitable or unusable by a casualty while the homeowner constructs a replacement if: (1) the homeowner does not establish a different principal residence for which the homeowner receives an exemption and, (2) the homeowner intends to return and occupy the structure as the homeowner's principal residence. To continue the exemption, the homeowner must begin active construction of the replacement qualified residential structure or other physical preparation of the construction site, on or before the first anniversary of the date the homeowner ceases to occupy the former qualified residential structure as its principal residence. The site of a replacement qualified residential structure is under physical preparation if the owner has engaged in architectural or engineering work, soil testing, land clearing activities, or site improvement work necessary for the construction of the structure or has conducted an environmental or land use study relating to the construction of the structure. The exemption, under these conditions, can be maintained for up to two years. It also preserves homestead protections for homeowners displaced by wind or water damage. If the homeowner sells the property before construction of the residential structure is completed, an additional tax is imposed on the property equal to the difference between the taxes imposed on the property for each of the years in which the owner received the exemption and the tax that would have been imposed had the owner not received the exemption in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due. A tax lien attaches to the property on the date the sale is completed. The lien exists in favor of all taxing units for which the additional tax is imposed.

Increases in Tax Appraisal Value

Tex. Tax Code § 23.01(e) prohibits increases in the appraisal value of a property the year after the property's appraised value was lowered based on a protest or appeal unless a chief appraiser can reasonably support an increase with substantial evidence from the record. The chief appraiser may satisfy

this requirement by presenting evidence showing that the inequality in the appraisal of property has been corrected with regard to the properties that were considered in determining the value of the subject property. The burden of proof is on the chief appraiser to support an increase in the appraised value of property under the circumstances described by this subsection.

Installment Payments of Taxes on Property in Disaster Area

If a residential homestead property, or a residential property that has less than five living units, or property owned or leased by a business entity with less than \$5 million in gross receipts in the entity's most recent federal tax year or state franchise tax annual period (in 2009 dollars—adjust annually for inflation by using the index that the comptroller considers to most accurately report changes in the purchasing power of the dollar for consumers in Texas) is in a disaster area and has been damaged by or as a direct result of the disaster, the owner may elect to pay the taxes in four equal installments, each of which are to be due two months apart from one another. In order to take advantage of this provision, the first installment must be paid before the first day of the month following the date the taxes are delinquent, and such payment must be accompanied by a notice to the taxing unit that the person will pay the remaining taxes in three equal installments. The three subsequent installments must be made by the first day of the second, fourth and sixth months after the delinquency date, respectively. For example, if the delinquency date is February 1, the second installment must be paid before April 1, the third installment must be paid before June 1, and the fourth installment must be paid before August 1. A person or business entity may pay more than the amount due for each installment, and the amount in excess of the amount due shall be credited to the next installment. If the person or business entity fails to make a payment before the installment payment deadline, the unpaid installment is delinquent and incurs a penalty of six percent. See [Tex. Tax Code § 31.032](#).

Waiver of Certain Tax Penalties

The chief appraiser or collector may waive a late penalty for an otherwise compliant taxpayer if the late filing was the result of a disaster that made it effectively impossible for the taxpayer to comply with tax filing requirements or if an event beyond the taxpayer's control destroyed the taxpayer's property or records. The taxpayer must submit the waiver application within thirty days of the filing deadline. See [Tex. Tax Code § 23.129](#).

Manufactured Homes - Regulation

The Texas Department of Housing and Community Affairs, through its Manufactured Housing Division (the "Division") regulates the manufactured housing industry in Texas. In addition to other duties, the Division is responsible for maintaining records of ownership of manufactured homes and records determining whether the manufactured home is considered real property or personal property under Texas law. The Division is also responsible for issuing and monitoring licenses to persons in the manufactured housing industry, as well as investigating and resolving consumer complaints. [Click here](#) to contact the Division.

Manufactured Homes – Statement of Ownership

Title to a manufactured home is evidenced by a "Statement of Ownership". Statements of Ownership are issued by the Division headquarters in Austin. You must apply to the Division for your Statement of Ownership within 60 days after you buy or relocate your home. This is very important because ownership of a manufactured home does not pass or vest at a sale or transfer of the home until a completed

Application for Statement of Ownership is filed with the Division. If you purchase your home from a licensed retailer, they may assist you in completing the necessary forms, and they must provide all necessary information, supporting documents, and fees and documents to the Division. If you acquire a home from someone other than a retailer, you may obtain the necessary forms from the Division's website or by calling 1-800-500-7074. To determine what you will need to submit with your Statement of Ownership application, please read [Applying for a Statement of Ownership \(PDF\)](#).

Buying Flood Damaged Manufactured Homes

Manufactured homes which have sustained flood or wind damage must be properly repaired and inspected before they can be sold or conveyed. A salvaged manufactured home cannot be sold or conveyed to anyone except a licensed Retailer and only a licensed retailer is authorized to rebuild a salvaged manufactured home. In addition, federal law requires that new homes sustaining damage must be rebuilt in accordance with the manufacturer's specifications and must pass inspection by the Manufacturer's Design Approval Primary Inspection Agency. These restored homes are sold as new homes and come with a one-year manufacturer's warranty. If the manufacturer will not honor the one-year warranty due to the extent of damage, then the restored home must be sold as a used home, at a reduced cost. Such homes will be sold with only a 60-day warranty of habitability.

5.2 Assistance Numbers and Helpful Regulatory Agency Information

U.S. Department of Housing and Urban Development (HUD)

1301 Fannin St., Suite 2200
Houston, TX 77002
(713) 718-3199 or 1-800-225-5342

OR

TTY: (800) 877-8339
Single Family: (877) 622-8525
Public Housing: (713) 718-3214
Multifamily: (800) 685-8470

<http://www.hud.gov>

Email to: answers@hud.gov

Federal Emergency Management Agency (FEMA)

<http://www.fema.gov>

1-800-621- 3362

Email to: FEMA-New-Media@dhs.gov

Do I Qualify for Housing Assistance?

<http://www.fema.gov/do-i-qualify-housing-assistance>

Disaster Relief Options for FHA Homeowners

http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/nsc/qaho0121

Property Taxes in Disaster Areas and During Droughts

<https://comptroller.texas.gov/taxes/property-tax/disasters/index.php>

Texas Department of Housing and Community Affairs – Manufactured Housing Division

<https://www.tdhca.state.tx.us/mh/index.htm>

[Click here for contact information](#)

5.3 Frequently Asked Questions

Q. 5-1 *My house was damaged, and I can't live in it. Do I have to make my mortgage payments? What if I can't pay my mortgage because of job or salary interruptions following the disaster?*

Most home loan agreements require the homeowner to make mortgage payments after a disaster—even if the house is damaged and the owner can't live in it. However, many lenders will allow the owner to delay mortgage payments for several months after a disaster (although interest may continue to be added). A loan deferral is commonly referred to as a forbearance. Many lenders will make loan modifications to allow the missed payments to be added to the loan, thereby lengthening the term of the mortgage. A loan modification can also lower the interest or the payment amount depending on the borrower's situation. The borrower needs to communicate the specifics of his or her circumstances with the lender as early as possible because lenders will often work with their customers when the circumstances permit. If the Federal Housing Administration (FHA) guarantees the mortgage, there are special provisions after a disaster, such as those above. In the wake of a disaster, some of the federal home loan guarantee programs often have moratoriums for a period of time. For more information on those provisions, see the section titled *How Can This FHA Disaster Relief Help Me?* at http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/nsc/qaho0121.

Q. 5-2 *What if I can't make the payments? Can my lender foreclose on me?*

Yes. The typical residential property mortgage in Texas doesn't include forbearance due to storm damage and allows the lender to foreclose following default. However, see the above discussion concerning forbearance and other payment options.

Note: Texas law allows for both judicial and non-judicial foreclosures. See *Kyle v. Countrywide Home Loans, Inc.*, 232 S.W.3d 355, 361–62 (Tex. App.—Dallas 2007, pet. denied) (describing some steps of the judicial foreclosure process); [Tex. Prop. Code § 51.002](#) (describing the steps of the non-judicial foreclosure process). Typically, most purchase money loans can foreclose via a non-judicial method. A non-judicial foreclosure only requires certain notices to be issued prior to selling at a foreclosure auction. Foreclosure auctions in Texas occur on the first Tuesday of each month except a few specific statutory holidays. No court is involved in the non-judicial foreclosure, as the name suggests. Home equity loans and tax foreclosures, among other types of loans, require a judicial foreclosure process. It is important to look at the type of loan and review the loan documents and deed of trust to determine which process is required and if it is being followed properly.

Q. 5-3 *What should I do if I receive a notice that my lender is going to foreclose on my home for nonpayment of the mortgage?*

If your mortgage is insured by the FHA or is financed by the Rural Development Agency of the U.S. Department of Agriculture, you may be entitled to reduced or suspended payments. See

http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/nsc/qaho0121 and <http://www.rd.usda.gov/files/3550-1appendix16.pdf>.

Your lender must notify you and give you an opportunity to seek help before beginning the foreclosure proceedings. However, you must meet the deadlines the lender gives you.

If you have income and you want to keep your house, you may be able to file a Chapter 13 bankruptcy. In this type of bankruptcy, the homeowner pays regular mortgage payments that accrue after the bankruptcy, all other living expenses, and an amount every month toward the mortgage installments that were delinquent prior to the bankruptcy. See [11 U.S.C. § 1322](#); *In re Adams*, [176 B.R. 9](#), 10 (Banker. E.D.N.C. 1994). If you think you may want to file a Chapter 13 bankruptcy, you should consult an attorney.

Q. 5-4 In the event of a disaster, who is responsible for replacing my personal property that was located on someone else's property (on leased property, rented out to a customer, etc.)?

Absent an unusual lease provision to the contrary, the landlord will not be liable to the tenant (or the tenant's customers, in a commercial context) for storm damage to the tenant's (or its customers') personal property. Some landlords require tenants to have renter's insurance. A tenant who has renter's insurance might be able to file a claim for damage to personal items through the tenant's insurance company.

Put simply, the owner of the personal property bears the loss. Insurance contracts, however, will often produce different results. For instance, the liability insurance carried by a car dealership might cover storm damage to third party vehicles that were in the shop waiting for repair when the storm hit. In some situations, multiple insurance coverages might be available (in the example just given, the car dealership and the car owner may each have insurance that would apply), but the resolution of the question of whose insurance would pay when neither party is at fault is beyond the scope of this outline.

Q. 5-5 In the event of a disaster, who is responsible for reimbursing me for the value of my stolen (looted) personal property?

Generally, theft is covered under most insurance policies. Furthermore, a homeowner's policy usually sets forth what specific property is included and excluded for homeowners. A landlord's insurance is not likely to cover a tenant's looted property, and, as noted above, the landlord will probably not be legally responsible absent either a lease provision or a widely recognized common law theory (e.g., a landlord's failure to provide adequate security) that places the loss on the landlord. It is highly unlikely that a common law theory would fit the circumstances of the disasters within the scope of this outline.

Q. 5-6 Are there any programs available for me to recover the value of my lost personal property?

FEMA may cover some of the value of your lost personal property. You may be able to receive money from FEMA for "Other than Housing Needs" that are the result of a disaster to replace necessary items of personal property, such as clothing, household items (room furnishings, appliances), tools required for your job (specialized or protective clothing and equipment), and necessary educational materials

(computers, school books, supplies). Applications for assistance can be sent by either calling 1-800-621-3362 (hearing/speech impaired ONLY—call 1-800-462-7585) or by visiting <https://www.fema.gov/individual-disaster-assistance>. Absent insurance, FEMA rules apply and are beyond the scope of this outline.

Q. 5-7 Can my property be condemned?

Yes. Agencies with appropriate jurisdiction (local, state, and federal) can decide to condemn a property.

Q. 5-8 If my property is condemned, will I be paid for it?

Determining that a structure is no longer habitable (condemnation) is not a “taking” for public use. Thus, the government would not be liable to the property owner for the value of the condemned property. See, e.g., *Fort Worth & D.C. Ry. Co. v. Ammons*, [215 S.W.2d 407](#), 410 (Tex. App.—Amarillo 1948, writ ref’d n.r.e.). Insurance, FEMA disaster assistance, or similar relief will generally be the only sources of recovery.

Q. 5-9 How will I know if it is safe to move back into my property?

Government agencies and FEMA will make this decision for you. How and when they make this decision are issues that are beyond the scope of this outline.

Q. 5-10 My property was damaged in a disaster (flood, tornado, explosion, hurricane) this year. Do I still have to pay the same amount in property taxes that I paid last year?

Maybe not. Under state law, if your property is damaged due to a disaster your property may qualify for a temporary exemption from property taxes of between 15% to 100% of the appraised value of the property. In order to qualify for a temporary exemption, (1) the damage must have occurred to “qualified” property (see discussion below), (2) the property must have been damaged by a disaster in a governor-declared disaster area, (3) the property must be at least 15% damaged. See [Tex. Tax Code §11.35](#). The following types of property are considered “qualified” property: (a) tangible personal property used for income production, (b) improvements (e.g. buildings) on your land and (c) certain manufactured homes.

In addition, your local county or city may offer exemptions under certain circumstances. We recommend that you check with the tax controller in your county.

Q. 5-11 What if my property was affected by a non-natural disaster (i.e., an explosion)?

If your property is damaged by a non-natural disaster, you will not qualify for the property tax exemption described in Q. 5-10 above. You should check with your local tax authority to see if you might be eligible for some other type of exemption.

Q.5-14 – How much of an exemption am I entitled to?

If you qualify for an exemption, the percentage of the exemption will depend on the amount of damage to the property. The degree of damage is determined by the chief appraiser of the county appraisal district appraisal office. In determining the level of damage, the chief appraiser may rely on information from a

county emergency management authority, the Federal Emergency Management Agency (FEM A) or other appropriate source. The exemption percentage starts at 15% and can go up to 100% if the property is totally destroyed.

Q. 5-14 – What is the process to request an exemption from paying my property taxes?

In order to be eligible for a temporary exemption from property tax due to a disaster, you must submit your request to the appraisal district office in the county where the property is located. [Click here](#) for the application form. **You must apply for the temporary exemption no later than 105 days after the governor declares a disaster area.** Following your application, the chief appraiser will assess the degree of damage to the property (see Q.5-14 above) and will determine whether to approve, modify or deny your application or whether more information is necessary in order to make a determination. The chief appraiser must notify you of its decision no later than five (5) days after making a determination.

Q. 5-15 – I qualified for a tax exemption. How long will it last?

The exemption lasts until January 1 of the first tax year in which the property is reappraised

Q. 5-14 What is a “disaster recovery program”?

A “disaster recovery program” is a program “administered by the General Land Office or by a political subdivision of this state that is funded with community development block grant disaster recovery money authorized by federal law.” [Tex. Tax Code § 23.23\(g\)](#).

Q. 5-15 A disaster recovery program repaired a building on my property after a disaster. The building is different from the original that was replaced. Will this affect my taxes?

It depends. Under [Tex. Tax Code § 23.23\(g\)](#), replacement structures that differ from the originals may not necessarily be considered “new improvements” if an increase in the square footage or the quality of construction and composition were necessary to satisfy the requirements of the disaster recovery program.

6.0 EMPLOYER/EMPLOYEE ISSUES

6.1 OVERVIEW

This section provides practical advice for assisting persons who have temporarily or permanently lost employment, or are facing other employment-related issues as a result of a disaster.

6.2 MOST COMMON QUESTIONS

Common employment-related questions arising from a disaster are:

- What unemployment benefits are available if my employment is interrupted or lost due to a disaster (or if my family income is affected by a disaster)?
- Can my health benefits be continued if I lose my job due to disaster?
- Can my employer fire me because a natural disaster has occurred?
- If I cannot work because of disaster, does my employer have to pay me anyway?
- Am I entitled to leave if a family member or I become ill as a result of the disaster or its aftermath?
- How do I get my pay?

6.3 SUMMARY OF THE LAW

A. *Unemployment Compensation*

1. Non-disaster Unemployment Compensation

To be eligible for regular (non-disaster) unemployment compensation under the Texas Unemployment Compensation Act (Texas Labor Code Title 4), an individual must meet all of the following requirements:

- a. The individual must have earned sufficient wages to qualify for benefits in the “base period” (The base period is defined as the first four calendar quarters of the five calendar quarters immediately preceding the date the individual files a claim for unemployment benefits), see TWC page on [Eligibility and Benefit Amounts](#);
- b. the individual must be unemployed or partially unemployed;
- c. the individual cannot have been fired for misconduct or voluntarily quit without good cause, see TWC page on [Eligibility and Benefit Amounts](#);
- d. (4) the individual must be able and available to work; and
- e. the individual must be actively seeking work. See TWC page regarding [Ongoing Eligibility Requirements](#) for Receiving Unemployment Benefits.

For more information regarding these requirements, see the TWC page on [eligibility and benefit amounts](#).

2. Federal Disaster Unemployment Assistance (DUA)

Federal Disaster Unemployment Assistance (DUA) provides unemployment benefits for people who lost their jobs or self-employment livelihoods, or who cannot work as a direct result of a major disaster. To be eligible for federal DUA, the individual must have applied and been rejected, or exhausted regular unemployment benefits through the Texas Workforce Commission (TWC). To access federal DUA, the individual therefore must have applied to the TWC first. Availability of DUA is triggered by a major disaster declaration. It is available only during a Disaster Assistance Period, which runs from the first Sunday following the declaration, and ends on a later date as determined by DUA and FEMA. Benefits paid under DUA are counted as taxable income to the recipient.

In addition to ineligibility for regular TWC unemployment benefits, the DUA applicant must establish one or more of the following:

- a. The job lost represented more than 50% of the applicant's income.
- b. The applicant lives, works, or travels through the disaster area.
- c. The applicant's place of employment was damaged or closed.
- d. The applicant was hired to start a job, but the job no longer exists or the place of employment can no longer be reached.
- e. The applicant suffered injury or incapacitation.
- f. The applicant became breadwinner or major support of the household due to the death of the head of household.

In the event of a disaster, the TWC will publish announcements about the availability of DUA benefits and the deadline to apply for benefits. Visit the [Applying for DUA](#) page on the TWC website.

According to the TWC, DUA is not available as part of [COVID-19 relief](#).

See the FFRCA and CARES Act sections below.

3. Unemployment Benefits During COVID-19

Under normal circumstances, TWC cannot pay you for the first week of your claim, ([the waiting week](#)), until you return to full-time work or exhaust your benefits. Due to the COVID-19 pandemic, TWC has waived the waiting week for claimants affected by COVID-19.

Additionally, TWC has waived the work search requirements for all claimants (not only those affected by COVID-19). Normally, a claimant must register for work search and meet the minimum number of work search activities per week (item 5 above). See [TWC Waives Certain Requirements](#) for Unemployment Benefits Services (March 17, 2020)

See the FFRCA and CARES Act sections below for further detail.

B. Continuation of Group Health Coverage under COBRA

After a disaster, some individuals may lose their employer-provided group health plan coverage as a result of either a voluntary or an involuntary termination or a reduction in work hours that renders them unable to continue coverage. An employer may be required to extend COBRA continuation coverage to such an individual and his dependents (Qualified Beneficiaries) previously covered under the employer's group health plan. The death of the covered employee would also be a qualifying event that would trigger an employer's obligations under COBRA. [26 U.S.C. § 4980B\(f\)\(3\)](#).

COBRA continuation coverage is not available in all situations. COBRA generally only applies to private sector employers with at least twenty employees, governmental employers, and certain employee organizations. [26 C.F.R. § 54.4980B-2](#), Q&A-4. Also, COBRA coverage is not available if the termination was for gross misconduct.

If applicable, COBRA requires an employer to extend to Qualified Beneficiaries the right to continue their health coverage under the same group health plan under which the beneficiaries were covered prior to their coverage loss. [26 U.S.C. § 4980B\(f\)\(2\)\(A\)](#). If the employer no longer offers the same health plan, the Qualified Beneficiary may elect coverage under another group health plan maintained by the employer. Group health plans include, but are not limited to, medical, dental, and vision plans. See [26 C.F.R. § 54.4980B-2](#), Q&A-1. Each Qualified Beneficiary may make a separate election with respect to coverage. See [26 C.F.R. § 54.4980B-6](#), Q&A-6. For example, if an employee previously covered a spouse and a dependent child through family coverage under an employer-provided group health plan, either the spouse or the dependent child could separately elect COBRA continuation coverage under a single, rather than family, plan while the remaining family members waived coverage.

Generally, a Qualified Beneficiary may continue his or her coverage for up to eighteen months. [26 U.S.C. § 4980B\(f\)\(2\)\(B\)\(i\)](#). However, COBRA coverage can be very costly. An employer may charge up to 102 percent of the actual cost of providing the coverage to a similarly situated active employee (not just the contribution for coverage that the employee paid while actively employed). [26 U.S.C. § 4980B\(f\)\(2\)\(C\)](#). Further, an employer is not required to offer COBRA coverage if it ceases providing any group health plan to its active employees. [26 U.S.C. § 4980B\(f\)\(2\)\(B\)\(ii\)](#). For example, if an employer closes operations entirely and no longer offers any group health plans, a Qualified Beneficiary has no rights under COBRA to continuation coverage.

An individual who is eligible for COBRA coverage and wishes to elect COBRA coverage should contact the employer providing the group health plan coverage. Employers are generally required to send a notice regarding COBRA rights to the last known mailing address of the Qualified Beneficiary. Therefore, those who have been dislocated by the disaster may not promptly receive notice from their employers regarding COBRA continuation coverage. Qualified Beneficiaries only have sixty days in which to elect COBRA coverage from the later of the date of the COBRA notice or the loss of coverage. [26 U.S.C. § 4980B\(f\)\(5\)](#). For further information, see the Department of Labor publication, [An Employee's Guide to Health Benefits Under COBRA](#).

C. Affordable Care Act

In declared disaster situations, the Affordable Care Act (ACA) requires insurers to provide coverage for out-of-network care for individuals displaced by disaster and prohibits insurers from charging higher coinsurance or copayment amounts for out-of-network care than for in-network care. It does not prohibit medical providers from billing consumers the balance after the insurer-paid portion.

Each health plan will have different policies regarding out-of-network reimbursement. Individuals should contact the health insurer directly by calling the number listed on the back of the insurance card or by visiting the insurer's website. If the individual does not have access to their card, they can contact the Marketplace Call Center (HealthCare.gov) at 1-800-318-2596 (TTY: 1-855-889-4325). The Texas Department of Insurance (TDI) may issue disaster bulletins that affect health and other insurance providers in Texas. During Hurricane Harvey, for example, the TDI issued a [bulletin](#) recommending that Texas health insurers waive restrictions or penalties on members going out-of-network for health and dental services during the disaster period declared by the governor.

D. CARES Act

In response to the COVID-19 pandemic, on March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The full text of the Act is [here](#). The CARES Act created new temporary federal programs, including the Pandemic Emergency Unemployment Compensation (PEUC), the Pandemic Unemployment Assistance (PUA) and the Federal Pandemic Unemployment Compensation program (FPUC).

TWC Guidance. Two charts produced by TWC summarize benefits available under the CARES Act and the claims processes:

[Extended Unemployment Benefits in Texas](#), and
[What You Need to Know and Do Under the Cares Act](#)

1. Pandemic Emergency Unemployment Compensation (PEUC)

[Section 2107](#) of the CARES Act created the PEUC program that provides up to 13 additional weeks of benefits to individuals who have exhausted their regular unemployment compensation entitlement. Under the agreement between the state and the Secretary of Labor, the state will make payments of pandemic emergency unemployment compensation to individuals who:

- (1) have exhausted all rights to regular compensation under state or federal law;
- (2) have no rights to regular compensation with respect to a week under such law or any other state unemployment compensation law or to compensation under any other Federal law;
- (3) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and
- (4) are able to work, available to work, and actively seeking work, except in instances where COVID-19 has made it not possible, including illness, quarantine, or “stay at home” orders. ([Public Law 116-136, H.R. 748, Sections 2107\(a\)\(2\)-\(7\)](#)).

An individual has “exhausted” benefits when: (A) no payments of regular compensation can be made under state law because such individual has received all regular compensation available to such individual based on employment or wages during such individual’s base period; or (B) such individual’s rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed. ([Public Law 116-136, H.R. 748, Section 2107\(a\)\(3\)](#)).

The amount of pandemic emergency unemployment compensation which shall be payable to any such qualifying individual for any week of total unemployment shall be equal to: (i) the amount of the regular compensation (including dependents’ allowances) payable to such individual during such individual’s benefit year under state law for a week of total unemployment; and (ii) the amount of Federal Pandemic Unemployment Compensation under Section 2104 of the CARES Act (discussed under the “FPUC” subsection below) ([Public Law 116-136, H.R. 748, Section 2107\(a\)\(4\)](#)).

2. Pandemic Unemployment Assistance (PUA)

Section 2102 of the CARES Act created the PUA program that provides up to 39 weeks of unemployment benefits to individuals not otherwise eligible for unemployment benefits, including business owners, self-employed, independent contractors and those with limited work history, see Department of Labor Unemployment [Insurance Directive 16-20](#) (April 5, 2020).

The PUA program covers any individual who:

- a. is not otherwise eligible for, or has exhausted all rights to, unemployment benefits, and
- b. is unemployed, partially unemployed, or unable to work because of any of the following COVID-19-related circumstances:

- c. the individual has been diagnosed with COVID-19 or is seeking diagnosis;
- d. a member of the individual’s household has been diagnosed with COVID-19;
- e. the individual is providing care for a family or household member who has been diagnosed with COVID-19;
- f. the individual is the primary caregiver for a child or other household member who is unable to attend school or another facility that has been closed due to COVID-19;
- g. the individual cannot reach their place of employment as a result of a COVID-19-related quarantine;
- h. the individual was scheduled to begin employment and does not have a job or is unable to reach that job as a direct result of COVID-19;
- i. the individual has become the primary support source for a household because the head of the household has died as a direct result of COVID-19;
- j. the individual has been forced to quit a job as a direct result of COVID-19; or
- k. the individual’s place of employment is closed as a direct result of COVID-19. ([Public Law 116-136, H.R. 748, Section 2102\(a\)\(3\)](#)). Individuals able to telework or currently receiving paid sick leave or other paid benefits are excluded from the program.

The amount of assistance that such individuals are entitled to is: (i) the weekly amount authorized under the unemployment compensation law of the state where the individual was employed, (ii) the amount of the Federal Pandemic Unemployment Compensation under Section 2104 of the CARES Act (discussed under the “FPUC” subsection below) and (iii) any applicable increase in the weekly benefit amount under the CARES Act. ([Public Law 116-136, H.R. 748, Section 2102\(d\)](#)).

3. Federal Pandemic Unemployment Compensation (FPUC)

Section 2104 of the CARES Act created the FPUC program that provides an additional amount of benefits to individuals who already receive unemployment benefits, see [Unemployment Insurance Program letter 15-20](#) (April 4, 2020).

The FPUC program covers individuals who are already collecting regular unemployment compensation (including Unemployment Compensation for Federal Employees and Unemployment Compensation for Ex-Service members, PEUC, PUA, Extended Benefits, Short Time Compensation, Trade Readjustment Allowances, Disaster Unemployment Assistance, and payments under the Self Employment Assistance program). ([Public Law 116-136, H.R. 748, Section 2104\(b\)\(1\)](#)). The PFUC program provides \$600 per week to such individuals in addition to the amount of unemployment compensation already being received by the individual. ([Public Law 116-136, H.R. 748, Section 2104\(b\)\(1\)](#)). The benefits under this program are available beginning after the date on which the state entered into the specified agreement with the Secretary of Labor and ending with weeks of unemployment ending on or before July 31, 2020. ([Public Law 116-136, H.R. 748, Section 2104\(e\)](#)).

E. Families First Coronavirus Response Act (FFCRA)

Also in response to the COVID-19 pandemic, on March 18, 2020, President Trump signed into law the Families First Coronavirus Response Act (FFRCA), which created two new emergency paid leave requirements, the Emergency Paid Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA), as amended by the CARES Act, see [Paid Leave Under the Coronavirus Response Act Temporary Rule](#) (April 6, 2020).

F. Emergency Paid Leave Act (EPSLA)

EPSLA requires covered employers to provide to its employees paid sick leave to the extent such employee is unable to work due to certain COVID-19 related circumstances.

A covered circumstance for an employee is any of the following reasons:

1. the employee is subject to a Federal, state, or local quarantine or isolation order related to COVID-19;
2. the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. the employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis; (4) the employee is caring for an individual who is subject to an order as described in clause (1) or who has been advised as described in clause (2);
4. the employee is caring for a son or daughter whose school or place of care has been closed or whose childcare provider is unavailable due to COVID-19 related reasons; or
5. the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor. ([85 FR 19326, Section 826.20\(a\)](#)).

EPSLA entitles full-time eligible employees to up to 80 hours of paid sick leave, up to a cap, and provides for full-time employees with varying workweek schedules and part-time employees, with specific rules. ([85 FR 19326, Section 826.21](#)). For an employee who takes paid sick leave due to circumstances listed in clauses (1) through (3) above, the employee is entitled to his or her full pay; *provided* that the amount of such pay is capped at \$511 per day and \$5,110 in the aggregate. For an employee who takes paid sick leave due to circumstances listed in clauses (4) through (6) above, the employee is entitled to two-thirds of his or her full pay; *provided* that the amount of such pay is capped at \$200 per day and \$2,000 in the aggregate. ([85 FR 19326, Section 826.22](#)). An employer may not require an employee to use other paid leave provided by the employer before the employee uses the paid sick leave. ([85 FR 19326, Section 826.160](#)).

Covered employers are:

1. private employers with fewer than 500 employees, and
2. public agencies, with the Secretary of Labor having the ability to exempt certain employers with fewer than 50 employees for certain circumstances. ([85 FR 19326, Sections 826.40\(a\) and 826.40\(b\)](#)). Covered employers may exclude health care providers or emergency responders from taking the paid sick leave. ([85 FR 19326, Section 826.25\(c\)](#)).

G. Emergency Family and Medical Leave Expansion Act (EFMLEA)

EFMLEA requires covered employers to provide expanded family and medical leave to eligible employees who are unable to work because such employee is caring for his or her child due to certain COVID-19 related circumstances.

Under EFMLEA, an eligible employee is entitled to take up to twelve workweeks of expanded family and medical leave. ([85 FR 19326, Section 826.23](#)). After the first two weeks, the employee is entitled to two-thirds of his or her full pay for the remaining ten weeks; *provided* that the amount of such pay is capped at \$200 per day and \$10,000 in the aggregate. ([85 FR 19326, Section 826.24](#)). An employee may substitute paid sick leave under EPSLA or paid leave under the employer's preexisting policies for the two weeks of unpaid leave. An eligible employee may elect to use, or an employer may require that an employee use, such expanded family and medical leave concurrently with any leave offered under the employer's policies that would be available for the employee to take to care for his or her child, such as vacation or personal leave or paid time off. ([85 FR 19326, Section 826.24\(d\)](#)).

Eligible employees are those who have been employed by the employer for at least 30 calendar days, and includes employees who were laid off or otherwise terminated on or after March 1, 2020, had worked for the employer for at least thirty of the prior 60 calendar days, and were subsequently rehired or otherwise reemployed by the same employer. ([Public Law 116-136, H.R. 748, Section 3605](#) (amending FMLA section 110(a)(1)(A)). An eligible employee is entitled to the expanded family and medical leave because he or she is unable to work due to a need to care for his or her child whose school or place of care has been closed, or whose child care provider unavailable, for reasons related to COVID-19 and only if no suitable person is available to care for his or her child during the period of such leave. ([85 FR 19326, Section 826.20\(b\)](#)).

Covered employers are (1) private employers with fewer than 5000 employees and (2) public agencies, except with respect to the Federal government, only those Federal employees covered by Title I of the FMLA are eligible for the expanded family and medical leave. ([85 FR 19326, Sections 826.40\(a\) and 826.40\(c\)](#)). The Secretary of Labor can exempt certain employers with fewer than 50 employees under certain circumstances. ([85 FR 19326, Section 826.40\(b\)](#)). Covered employers may exclude health care providers or an emergency responders from taking the expanded family and medical leave. ([85 FR 19326, Section 826.25\(c\)](#)).

H. *Employer's Wage Payment Obligations*

1. Fair Labor Standards Act

Under the federal Fair Labor Standards Act (FLSA), [29 U.S.C. § 201 et seq.](#), the Texas Minimum Wage Act (TMWA), [Tex. Lab. Code § 62.001 et seq.](#), and common law, employees must be paid for all work performed and for all time worked. This is true regardless of immigration status. It is not a valid defense to FLSA and TMWA claims that the work was done slowly, poorly, etc., or that the employer cannot afford to pay. Work time includes time that an employee has been engaged to wait, as well as travel time between job sites. In general, there are no exceptions made in the case of disasters. See the Department of Labor publication, [Employment & Wages Under Federal Law During Natural Disasters & Recovery](#).

Certain employees are exempt from the FLSA's minimum wage and overtime provisions because they are bona fide executive, administrative, professional, outside sales, or certain computer employees paid a salary of at least \$455 per week. Exempt employees must be paid full salary if the business shuts down for less than a full workweek, or if the employer does not have work available for the employee for the full work week. When the business is open and work is available, the employer may deduct from the employee's salary if the employee is absent from work for one or more full days for personal reasons. An employer can deduct a full day if it occurred because of sickness or disability, as long as the deductions are made pursuant to a *bona fide* sick or disability leave plan, policy, or practice. See [29 C.F.R. § 541.602](#). See [Salary Basis Requirement and the Part 541 Exemptions Under the Fair Labor Standards Act](#), and [Frequently Asked Questions Regarding Furloughs and Other Reductions in Pay and Hours-Worked Issues](#).

More information about wages is available from U.S. [Department of Labor Fact Sheets](#), including explanations of the different requirements for different categories of workers (migrant and seasonal agricultural workers, workers on visas, first responders, etc.).

2. Texas Payday Law

The Texas Payday Law requires employers to pay employees who are exempt from the FLSA's overtime provisions at least once a month, and employees who are not FLSA-exempt must be paid at least twice a month on the payday designated by the employer. [Tex. Lab. Code § 61.011](#). Wages may be paid by (1) delivering them to the employee, or a person designated by the employee in writing, at the employee's

regular place of employment, during regular work hours, or at a place and time agreed by employer and employee; (2) sending them to the employee, or a person designated by the employee in writing, by registered mail, to be received no later than payday; or delivering them to the employee by any reasonable means authorized by the employee in writing. Employers with a direct deposit plan may also pay wages by direct deposit. [Tex. Lab. Code § 61.017](#). Employers whose employees may have been displaced by a natural disaster should take steps to ensure that pay is delivered in a manner that ensures receipt by the employee.

An employee whose last paycheck is delayed because of a disaster may submit a Texas wage claim with TWC no later than 180 days after the date the wages originally became due for payment. For more information, including wage claim forms, see <https://twc.texas.gov/jobseekers/how-submit-wage-claim-under-texas-payday-law>.

An employee who is discharged from employment must be paid in full no later than the sixth day after the date of discharge. Employees who are not discharged but leave employment voluntarily must be paid in full no later than the next regularly scheduled payday. [Tex. Lab. Code § 61.014](#).

3. Wage Theft

The Texas legislature amended the Penal Code to provide victims of wage theft from new/temporary employers with greater protection. [Texas Penal Code § 31.04](#) now categorizes conduct as theft of service when an employer “intentionally or knowingly secures the performance of the service by agreeing to provide compensation and, after the service is rendered, fails to make full payment after receiving notice demanding payment.” Most importantly, under the amended law, the partial payment of wages alone is not sufficient evidence to negate an employer’s intent to avoid payment for a service.

4. WARN Act

Under certain circumstances, employees who lose employment as a result of a plant closing or mass layoff are entitled to sixty days’ advance notice under the federal Worker Adjustment and Retraining Notification (WARN) Act, [29 U.S.C. § 2101 et seq.](#) If the closing or layoff is a direct result of a natural disaster, employers must still give as much notice as possible, even if that notice comes after the disaster. Employees who do not receive proper notice may be due back pay and benefits for up to the sixty-day notice period. The WARN Act notice requirement applies only to employers with at least 100 employees. The employer must give written notice to the bargaining representative of affected union employees and to unrepresented individual workers who may reasonably be expected to experience an employment loss. Notice must include whether the layoff or closing is permanent or for six months or less, the date (within a fourteen-day period) that the employee’s employment will end, and the name and contact information of a person in the company who can provide additional information. For more information, including WARN Act compliance assistance materials, see <https://www.doleta.gov/layoff/warn/>.

5. Independent Contractor

A worker who is treated as an independent contractor by an employer may, in fact, be an employee, and may therefore be entitled to the protections of the FLSA, the TMWA, the Texas Payday Law, etc. While the Internal Revenue Service (IRS) considers many factors when determining whether a worker is an independent contractor or an employee, *control* is among the most important; a worker is likely an employee if the employer controls when and how the work is performed. The IRS additionally considers how the worker is paid, whether the worker has the potential to realize significant financial gain or loss, and whether the worker uses the employer’s tools or supplies, among other factors. For more information, see the IRS publication, [Independent Contractor \(Self-Employed\) or Employee?](#)

I. Prohibited Employment Discrimination & Wrongful Termination

Generally speaking, Texas is an employment-at-will state. This means that if an employer does not like the way the employee performed aspects of the job or if the employee has failed to follow workplace policies (or if the employee's services are simply no longer needed), an employer can fire the employee unless the firing is otherwise unlawful. Although "at-will" employment is the general rule, there are many exceptions, including the following:

- An employee cannot be fired because of the employee's race, sex (including LGBT status or pregnant status), religious preference, ethnicity, national origin (including language), age, or disability. See the Equal Employment Opportunity Commission publication, [Equal Employment Opportunity is the Law](#).
- An employee cannot be fired for complaining about the employee's rights under employment laws providing for minimum wage, overtime, medical leave, discrimination, workers' compensation, and workplace safety (among others).
- If the employee is covered by the Family and Medical Leave Act (FMLA, described in the following section), the employee cannot be fired for taking leave because of a serious illness, maternity leave, paternity leave, time off to adopt a child, or time off to help take care of a seriously ill close family member.
- An employee cannot be fired for refusing an order to do something illegal.
- An employee cannot be fired for discussing pay or working conditions with co-workers, or complaining with or on behalf of coworkers about pay or working conditions.
- An employee cannot be fired for being a member of, joining, or trying to form a union.
- An employee cannot be fired for reporting an employer's violation of a law to appropriate law enforcement authorities (known as "whistleblowing").
- If an employee has an employment contract specifying the grounds for termination, the employee cannot be fired in violation of that contract (this includes a collective bargaining agreement negotiated by a union in the employee's workplace).

The above list does not cover all of the situations in which it is unlawful for an employer to fire an employee, but it covers some of the more common types of terminations that are unlawful. The list is by no means exhaustive. For more information, see TWC information on [wrongful discharge and exceptions](#).

Prohibited employer discrimination against evacuees: Texas law also prohibits discrimination for participation in an emergency evacuation. An employer may not discharge or discriminate against an employee who leaves the employee's place of employment to participate in a general public evacuation ordered under an emergency evacuation order. [Tex. Lab. Code § 22.002](#). Emergency services personnel (including fire fighters, police officers, emergency medical technicians, and other individuals who are required to provide services for the benefit of the general public in emergency situations) are exempt from this provision. [Tex. Lab. Code § 22.004](#).

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

J. Unpaid Leave Entitlement

In addition to paid leave that may be available under an employer's vacation or sick leave policy, the federal Family and Medical Leave Act (FMLA) requires covered employers to provide up to twelve weeks of unpaid, job-protected leave to eligible employees for certain family and medical reasons. See [29 U.S.C. § 2601 et seq.](#); [29 C.F.R. pt. 825](#). Leave is available in part to cover an employee's own serious health condition that renders the employee unable to perform the employee's job, and to care for the employee's spouse, son or daughter, or parent who has a serious health condition. A serious health condition may be attributable to a disaster. For example, a disaster could exacerbate an employee's chronic condition (e.g. stress, anxiety, or soaring blood pressure) and render them unable to perform their job. Similarly, an employee may be required to care for a family member with a serious health condition for a reason connected with the natural disaster (for example, a family member on dialysis where usual dialysis services and transportation are disrupted by disaster).

Employees are eligible if they:

1. have worked for their employer for at least twelve months (need not be consecutive);
 2. worked at least 1,250 hours over the year preceding their need for leave; and
 3. if the employer has at least fifty employees within seventy-five miles of the employee's work site.
- The FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances. For the duration of FMLA leave, the employer must maintain the employee's health coverage under any group health plan.

Substitution of paid leave is allowed under the FMLA. [29 U.S.C. § 2612\(d\)\(2\)](#). Employees may take, or employers may require employees to use, paid vacation, personal, family, or medical sick leave concurrently with FMLA, subject to certain limitations. The U.S. Department of Labor updated the regulations under the FMLA in 2008, and these regulations now restrict the substitution of paid leave. Under [29 C.F.R. § 825.207](#), employers can require employees to meet all of the normal requirements of paid leave policies before permitting substitution. For example, if a policy requires that vacation be taken in full day increments, an employer can deny substitution for an employee's one-half day FMLA leave. Similarly, if vacation time cannot be taken during a particular month, substitution could be denied during that time period. Find out more about the [FMLA](#) from the US Department of Labor.

6.4 REGULATORY AGENCY DIRECTIVES

The U.S. Department of Labor, in coordination with FEMA, provides funds to state unemployment insurance agencies for payment of DUA benefits. Accordingly, the TWC administers DUA benefits to individuals who lost their jobs or self-employment or who are no longer working as a direct result of a major disaster for which a disaster assistance period is declared. In the event of a disaster, the TWC will publish announcements about the availability of DUA benefits and the deadline to apply for benefits. See the TWC's page on [disaster unemployment assistance](#).

Unemployed disaster victims who are not eligible for regular unemployment compensation should apply for DUA benefits as soon as possible since there are deadlines to apply as well as waiting periods for receipt of benefits. See the TWC's page on [disaster unemployment assistance](#).

6.5 FAQs

Q. 6-1 What is unemployment compensation?

Unemployment compensation, such as the benefits provided to Texas workers by the Texas Workforce Commission, provides temporary financial assistance for a worker who has been laid off or fired for a reason other than misconduct or quit a job for "good cause." If you have been fired from your job "for cause" (misconduct), you probably are not eligible to collect unemployment.

Q. 6-2 How do I qualify for unemployment insurance benefits?

To be eligible for regular (non-disaster) unemployment compensation in Texas, you

1. must have earned sufficient wages to qualify for benefits in the “base period”;
2. must be unemployed or partially unemployed;
3. cannot have been fired for misconduct or voluntarily quit without good cause;
4. must be able and available to work; and
5. must be actively seeking work. See the TWC page on [eligibility](#).

Q. 6-3 What is Disaster Unemployment Assistance, or DUA?

DUA provides financial assistance to you if your employment or self-employment has been lost or interrupted as a direct result of a major disaster as declared by the president of the United States *and* you are not eligible for regular unemployment insurance benefits under the TWC’s unemployment compensation program (for example, you are self-employed or you are unavailable to work due to an injury that is the direct result of the disaster). While DUA is a federal program, it is administered by states as agents of the federal government. [42 U.S.C. § 5177](#).

Q. 6-4 How do I qualify for Disaster Unemployment Assistance?

If you are an unemployed U.S. national or qualified alien, you might qualify for DUA if you:

1. have applied for and used all regular unemployment benefits from any state or do not qualify for unemployment benefits;
2. worked or were self-employed or were scheduled to begin work or self-employment in the disaster area; and
 - a. can no longer work or perform services because of physical damage or destruction to the place of employment as a direct result of the disaster;
 - b. can no longer work because the individual is not able to reach the place of employment as a result of the disaster;
 - c. the workplace is inaccessible due to closures by federal, state, or local officials;
 - d. cannot perform work or self-employment because of an injury as a direct result of the disaster; or
 - e. became the breadwinner or major supporter of a household because of the death of the head of the household as a result of the disaster; and
3. establish that the work or self-employment you can no longer perform was your primary source of income.

Disaster Unemployment Assistance for Noncitizens:

Noncitizens must meet the following requirements (in addition to other DUA requirements) to be eligible for DUA. See [20 C.F.R. § 625.6\(a\)\(1\)](#):

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

- c. permanently residing in the United States under color of law at the time such services were performed.

With some exceptions, an individual's weekly benefit amount is normally calculated using the wage credits earned during the individual's base period (which is usually the first four calendar quarters of the five calendar quarters immediately preceding the date the individual claims unemployment benefits). See [Tex. Lab. Code §§ 201.011, 207.004](#). Therefore, the second requirement generally requires the noncitizen to have had one of the three statuses listed above during his base period or a portion of his base period. An individual who qualifies for benefits at the time of the application, but did not have a qualifying status during the [base period](#) may be ineligible for benefits.

Q. 6-5 How do I file for Unemployment Insurance (UI) or Disaster Unemployment Assistance (DUA)?

Note: disaster unemployment benefits are unrelated to FEMA benefits and require a separate application process. You must apply to TWC to determine if you are eligible for regular benefits before you can receive DUA. As a practical matter, the TWC may take your applications for both regular benefits and DUA at the same time.

Apply to TWC online or by phone. You will need to provide the business name and address of your employer, the first and last dates of employment, the number of hours worked, rate of pay, and your social security number or alien registration number if you are not a US citizen or national.

- To apply online, see <https://twc.texas.gov/jobseekers/unemployment-benefits-services>. Review the online benefits tutorial for help and answers: <https://twc.texas.gov/files/jobseekers/tutorial-apply-for-benefits-online-twc.pdf>.
- To apply by phone, call a TWC customer service representative at 800-939-6631. For Relay Texas (TDD): dial 7-1-1 or 800-735-2989; Relay Texas (Voice): 800-735-2988.

If you are eligible for DUA, TWC will mail information to you about your benefit amount, how to request payments, and other information.

You must complete your work search registration at WorkinTexas.com or your local Workforce Solutions Office within three (3) days of applying for DUA. Here is a list of [local workforce solutions offices](#). You do not have to register if you were self-employed at the time of the disaster and are taking steps to reopen your business. If you do not plan to reopen your business, you must complete a work search registration and seek work.

To receive DUA benefits, you must submit proof of employment with the employer that was affected by the disaster (a pay stub, earnings statement, written statement from your employer or notarized statement from a co-worker) to the TWC within twenty-one (21) days of the date the DUA application is filed. Failure to submit the required documentation within the twenty-one-day time period may result in denial of eligibility for DUA. For more detailed information, see the [TWC page on DUA](#).

Q. 6-6 How do I get proof of prior wages or earnings?

To obtain proof from the Internal Revenue Service (IRS) of prior income/earnings, file [IRS Form 4506-T](#), Request for Transcript of Tax Return, with the IRS. Write in the name of the disaster, for example "DISASTER [name of storm]," in red letters across the top of the forms to expedite processing. Submit the form according to the instructions. For help, call the IRS Disaster Assistance Hotline at (866) 562-5227. The IRS Resource Guide has links to [Disaster Assistance and Emergency Relief Programs](#).

Q. 6-7 Are unemployment insurance benefits taxable?

Yes. Any UI benefits, including federal DUA benefits, are taxable income. You will be issued a Form 1099-G at the end of January showing the amount of benefits paid to you, as well as any federal income tax withheld at the time the benefits were paid. The amount on the 1099-G will not show credit for any repayments made for overpaid benefits. If you repaid any benefits, be sure to keep records of payments, such as reimbursement receipts or canceled check notices, to make adjustments to your taxable income when you file your tax returns.

Q. 6-8 What DUA benefits are available?

If you are eligible, DUA is available for weeks of unemployment beginning after the date the president makes a disaster declaration and for up to twenty-six (26) weeks after the major disaster. For Texas employment, maximum weekly benefit amount will be determined by the TWC. For more information, visit the [TWC page on DUA](#).

Q. 6-9 Where can I get help finding new employment?

Reemployment services are available through Texas Workforce Centers. For more information, see <http://www.WorkInTexas.com>. Visit <https://twc.texas.gov/directory-workforce-solutions-offices-services> to find the Workforce Solutions office nearest you.

Q. 6-10 Is my employer required to continue my health insurance if my employment is reduced or I've been laid off?

An employer may be required to extend employer-based group health benefits under COBRA continuation coverage if benefits are lost due to certain qualifying events, including:

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

The continuation period under COBRA generally is eighteen (18) months. This does not mean that coverage is free. Your employer may charge up to 102 percent of the cost of providing coverage to a similarly situated active employee under the group health plan.

Certain employers, including small employers, may be exempt from COBRA. If your employer ends the group health plan for active employees, it is not required to extend coverage through COBRA. For more detailed information, see [An Employee's Guide to Health Benefits Under COBRA](#).

Q. 6-11 What happens to my family's coverage under the Affordable Care Act (ACA) during disaster?

If you are having trouble making your premiums because your wages have been impacted by disaster, contact your health insurance provider directly and let them know the reason. If you are displaced due to disaster and must use an out-of-network provider, you must check your policy. Each health plan will have different policies regarding out-of-network reimbursement. Call the number listed on the back of the insurance card or visit the insurer's website. If you lost your card, contact the Marketplace Call Center (HealthCare.gov) at 800-318-2596 (TTY: 855-889-4325).

Q. 6-12 Who do I contact if we're on Medicaid or Chip?

Your coverage should not be affected. If you have questions, visit the Texas Health and Human Services page on [coordinating your services](#). Alternatively, for Medicaid, call the Texas Health and Human Services Medicaid Client Hotline at 800-252-8263. For CHIP, call 877-543-7669 or 800-647-6558.

Q. 6-13 If my worksite temporarily closes, will I get laid off?

In some circumstances, it may make sense for your employer to place its employees on unpaid administrative leave status (temporary leave) while the office or other worksite regroups. If your employer's benefits plan permits continuation of coverage during unpaid administrative leave, you might be able to maintain coverage without a gap. Ask your employer about temporary reduced work hours and other alternatives to full employment while your employer is in a disaster recovery period.

Q. 6-14 Can my employment be terminated without notice or cause?

Generally, yes. Texas is an employment-at-will state. This generally means that if an employer does not like the way you performed aspects of the job, failed to follow workplace policies, or your services are simply no longer needed, your employer can fire you unless the firing is otherwise unlawful. Although "at-will" employment is the general rule, there are many exceptions. See the section titled "Prohibited Employment Discrimination & Wrongful Termination" above for more information.

The WARN Act, [29 U.S.C. § 2101](#) *et seq.*, requires that employers with 100 or more employees provide sixty days' notice before a mass layoff or a plant closing of at least thirty days. A "mass layoff" occurs when a third of employees are fired at worksites of fifty or more or when 500 or more employees are fired at a large worksite.

If the closing or layoff is a direct result of a natural disaster, employers must still give as much notice as possible, even if that notice comes after the disaster. Notice should be in writing, tell employees whether the layoff or closing is permanent or for six months or less, the date (within a fourteen-day period) that employment will end, and the contact information for the person within the company who can provide additional information. The employer must give written notice to the bargaining representative of affected union employees and to unrepresented individual workers who may reasonably be expected to experience an employment loss.

If you do not receive proper notice, you may be due back pay and benefits for up to the sixty-day notice period. For more information, see the Department of Labor page on [WARN Act Compliance Assistance](#).

Q. 6-15 Are there any legal restrictions against firing, suspending, or disciplining employees?

Various state and federal laws prohibit discrimination in hiring, discipline, discharge, and other terms and conditions of employment for other reasons. Please see the section titled "Prohibited Employment Discrimination & Wrongful Termination" above for more information.

Under Texas Labor Code chapter 22, an employer may not discharge or in any other manner discriminate against you if you leave work to participate in a general public evacuation ordered under an emergency evacuation order. An emergency evaluation order is an official statement issued by the governing body of Texas or a political subdivision of Texas recommending evacuation of all or part of the population of an

area stricken or threatened with a disaster. It includes a declaration of local disaster under section 418.108, Government Code.

If you are discharged in violation of chapter 22, section 22.002, you are entitled to reinstatement in the same or an equivalent position and pay. Chapter 22 does not apply to certain emergency personnel (e.g., firefighters, peace officers, medical personnel) if the employer provides emergency shelter for those personnel. It also does not apply to workers necessary to provide for the safety of the general public and restoration of vital services.

Q. 6-16 Am I entitled to take leave to deal with my own or a family member's serious health problem?

Your employer may have a sick leave or vacation policy that entitles you to a period of paid leave. In addition, the federal Family and Medical Leave Act (FMLA) may provide up to twelve weeks of unpaid leave to eligible employees for certain family and medical reasons. The FMLA applies to employers with at least fifty (50) employees. To be eligible, you must have worked for your employer for at least twelve months (need not be consecutive) and worked for at least 1,250 hours over the year preceding the need for leave. You can take leave for a serious health condition that prevents you from performing your job or to care for a spouse, child, or parent who has a serious health condition. You can continue your existing group health coverage and are entitled to reinstatement at the end of the leave. You will need to let your employer know that you or a family member has a serious health condition for which you require leave.

Q. 6-17 I had to evacuate and need to get my pay. What do I do?

If your wages are not direct deposited in your bank account, make sure your employer has your current address. Direct your employer to send your pay to you by registered mail. If you want to have someone receive or pick up your wages on your behalf, you must provide written consent to your employer to send or give your pay to that person.

Q. 6-18 Can my employer make me use leave time if I can't make it to work during a disaster?

Do not assume that you can leave work or not report to work during a disaster unless there is an official evacuation order. Under Texas law, your employer may not fire or discriminate against you for leaving work as part of an emergency evacuation order. An emergency evacuation order is an official statement by the government recommending evacuation because of a disaster or potential disaster. If there is no emergency order, your absence may be considered personal leave, unauthorized leave, or possibly grounds for termination, depending on your employer's policies.

For exempt employees, your employer must pay your full salary if the worksite is closed or unable to reopen due to disaster or weather for less than a full work week. If you perform any work during the work week, you are entitled to be paid your full salary, but you may be required to exhaust your accrued personal leave. If your worksite is open and you choose to stay home because of weather, road closures, transportation issues, or other emergencies, the U.S. Department of Labor considers these personal absences. Your employer may deduct from your salary for any full days during which you do not perform work and you chose not to come into the workplace.

For non-exempt employees (those entitled to overtime pay), employers are required to pay only for the hours that you have actually worked. You are not entitled to pay if your employer is unable to provide work due to a natural disaster.

Q. 6-19 My employment has been terminated. When will I get my final paycheck?

Contact your employer immediately to let them know where to send your final paycheck. If you quit, you are entitled to be paid your wages in full by the next regular payday. If you were fired, you are entitled to your full paycheck within six days of the date you were fired. “Final pay” includes regular wages, fringe benefits payable under a written policy, and any other component of your pay. Read your employment manual or contract. For wage complaints, call the Texas Workforce Commission at 800-832-9243. For more information, see the TWC page on [final pay](#).

Q. 6-20 How does the coronavirus (COVID-19) pandemic impact my unemployment benefits?

In addition to regular unemployment benefits, you are eligible to receive \$600 per week through the Federal Pandemic Unemployment Compensation program (FPUC) under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The benefits under this program are available beginning after the date on which the state entered into the specified agreement with the Secretary of Labor, and ending on or before July 31, 2020.

If you do not qualify for regular unemployment benefits, you may be eligible for unemployment programs under the CARES Act – the Pandemic Emergency Unemployment Compensation (PEUC) and the Pandemic Unemployment Assistance (PUA).

The PEUC program provides up to 13 additional weeks of benefits to those who have exhausted their regular unemployment compensation. The amount of emergency unemployment compensation to a qualifying individual for any week of total unemployment is equal to:

(i) the amount of the regular compensation (including dependents’ allowances) payable to the unemployed worker during the worker’s benefit year under state law for a week of total unemployment; and (ii) the amount of FPUC (discussed above).

The PUA program provides up to 39 weeks of unemployment benefits to those not otherwise eligible for unemployment insurance, gig workers, business owners, self-employed, independent contractors and those with limited work history. The amount of assistance a qualifying person is entitled to is: (i) the weekly amount authorized under the unemployment compensation law of the state where they were employed, (ii) the amount of t FPUC (discussed above) and (iii) any applicable increase in the weekly benefit amount under the CARES Act.

TWC Guidance. Two charts produced by TWC summarize benefits available under the CARES Act and the claims processes:

[Extended Unemployment Benefits in Texas](#), and
[What You Need to Know and Do Under the Cares Act](#)

Q. 6-20 What if I am unable to go into work due to COVID-19?

Under the Families First Coronavirus Response Act, two new emergency paid leave requirements were created, The Emergency Paid Leave Act (EPSLA) and The Emergency Family and Medical Leave Expansion Act (EFMLEA), as amended by the CARES Act.

EPSLA requires covered employers to provide to its employees two weeks of paid sick leave to the extent such employee is unable to work due to certain specified COVID-19 related circumstances. EFMLEA requires covered employers to provide twelve workweeks of expanded family and medical leave to those who are unable to work because they are caring for a child due to COVID-19 related circumstances. Under

EPSLA, based on the COVID-19 circumstance, the eligible employee is entitled to either two thirds or all of his or her full pay. Under EFMLEA, the eligible employee is not entitled to pay for the first two weeks of their expanded leave. They may substitute paid sick leave under EPSLA, or paid leave under the employer's preexisting policies. After the first two weeks, they are entitled to two-thirds of their full pay for the ten remaining weeks. The pay under both EPSLA and EFMLEA are capped.

7.0 SOCIAL SECURITY, BANKING & FINANCIAL ISSUES

SOCIAL SECURITY

7.1 Social Security Office Closures

The Social Security Administration (SSA) closed local, hearing, and regional offices to in-person visitors on March 17, 2020, due to the COVID-19 public health emergency. Due to these closures all in-person business such as interviews, appointments, and hearings have either been postponed or will be conducted over the telephone. Additionally, the processing times for almost all SSA business have been increased and delays should be expected.

7.2 FAQs - Social Security

Q. 7-1 Will I continue to get my SSA benefits?

Yes. SSA will continue to make regularly scheduled Retirement, Survivors, Disability Insurance, and Supplemental Security Income benefits payments.

Q. 7-2 How can I conduct business with SSA, such as file a new application for benefits or report changes?

Most SSA business can be conducted online or over the telephone. This includes filing new applications for some types of benefits, appealing SSA determinations, and updating personal information. To see a complete list of what business can be conducted online please visit www.ssa.gov. If you are unable to perform a desired task online you can still conduct most business with SSA over the telephone. Sometimes this will require SSA to mail you paperwork that you complete and mail back. Any documents that you mail to SSA should be mailed certified mail with return receipt requested to ensure and document that they are received on time. To contact SSA over the phone please call (877) 772-1213.

Q. 7-3 Can I still apply for benefits?

Yes. SSA is still accepting new applications for benefits and we encourage anyone who may be eligible to apply as soon as possible. If you need to apply for benefits you can either complete an application online or contact SSA over the telephone and ask to file an application. Do not wait to start your application until SSA offices reopen. This could result in losing benefits to which you are entitled.

Q. 7-4 What if I already have an appointment or hearing scheduled with SSA?

If you already have an in-person appointment or hearing scheduled with SSA you should immediately contact SSA to determine how to proceed. Most people who have in-person appointments or hearings already scheduled are being given the option of either conducting the appointment or hearing over the telephone or rescheduling to a later date when offices reopen. If possible, we recommend appointments or hearings be rescheduled until they can be conducted in-

person. However, this could result in a delay of several months. If you choose to proceed with a telephone appointment you need to make sure SSA has your current telephone number so that they can reach you at the scheduled time.

Q. 7-5 I received a notice or letter from SSA asking me to provide information or appeal a decision if I disagree. Do I need to respond by the stated deadline?

Yes. While SSA has said that it will extend deadlines for good cause if missed due to COVID-19, you should still file all responses within the stated deadlines. This is the only way to ensure that your filing is accepted. Most appeals can be filed [online](#).

BANKING & FINANCIAL ISSUES

7.3 Extension on 2019 Income Tax Filing Deadline

The Internal Revenue Service (“IRS”) has automatically extended the filing deadline to July 15, 2020. The IRS has also extended the deadline to pay any tax due until July 15, 2020. The IRS encourages taxpayers to file their 2019 tax return electronically if they are expecting a refund. Filing electronically and electing to receive a refund by direct deposit is the quickest way to receive payment. Taxpayers who need more time to file beyond the extended deadline must [request an automatic extension](#) by submitting Form 4868 by July 15, 2020.

7.4 Economic Impact Payment under CARES Act for Individuals

The Economic Impact Payment (“EIP”) was a result of the CARES Act, passed in March 2020, designed to provide taxpayers economic relief in light of the COVID-19 pandemic. Under the law, the EIP is technically an advance payment of a refundable credit to be claimed on the 2020 tax return (to be filed in early 2021). The amount of the refundable credit is dependent upon a taxpayer’s filing status, adjusted gross income (“AGI”), and number of dependents under 17 years old at the end of 2019. This means that the payment will eventually be based on the taxpayer’s data for the 2020 tax year. Because the IRS doesn’t know what taxpayers are earning during the 2020 tax year yet (since no one has filed their tax returns for 2020), the IRS will base payment on the information that is available now. If there is a 2019 federal income tax return on file, this information will be used. If there is no 2019 tax return filed at the time of determination, payment will be based on the 2018 tax return.

If a taxpayer does not receive the EIP now, they may be eligible to claim it on their 2020 tax return. If a taxpayer is not eligible for the EIP now based on their 2019 tax status, they may be eligible to receive the EIP when they reconcile the credit on their 2020 tax return.

If the taxpayer did not receive the full amount of the EIP and their 2020 tax return shows that they are eligible for a greater EIP, then they will receive the additional payment. This can generate a larger refund when filing the 2020 tax return or a reduction of tax due.

If the taxpayer's 2020 tax return shows that they were not eligible to receive the amount that they received in 2020, they will not be required to return any excess EIP. There is no provision in the CARES Act to claw back an overpayment of the EIP.

Recipients who were eligible to receive additional funds for qualifying dependent children, but did not receive the funds, will be able to claim the additional amount on their 2020 tax return. People who do not usually file taxes will need to file a simple tax return for tax year 2020 to receive any EIP that they did not receive this year.

7.5 Eligibility for, and Delivery of, the EIP or “Stimulus Check”

The EIP is not considered taxable income and taxpayers will not be taxed on the receipt of the EIP. The [Social Security Administration has advised](#) that the EIP will not be treated as income for Supplemental Security Income (“SSI”) recipients and it will similarly be excluded from resources for twelve (12) months. According to the IRS, the following individuals are eligible for the EIP: U.S. citizens, permanent residents, and qualifying resident aliens (defined by IRS, not immigration, rules and regulations) if they (1) have a valid Social Security Number (“SSN”) for work purposes; (2) could not be claimed as a dependent of another taxpayer; and (3) have an AGI under certain limits.

Most eligible taxpayers will not have to take any action to receive the EIP. However, under certain circumstances, a taxpayer may have to take steps to receive the EIP or to receive the correct amount of EIP. Recipients of federal benefits will not have to take any action to receive their individual EIP. Low-income taxpayers who have not filed a tax return for 2019 or 2018 because they did not have any income or because their income was below the filing threshold (\$12,000 for single filers and \$24,000 for spouses filing joint returns) will need to take action to receive the EIP. It is important to note that eligible taxpayers with a [filing requirement](#) who have not filed a tax return for 2018 or 2019 *must* file their 2019 return to receive an EIP. The IRS advises these taxpayers to file electronically and include direct deposit information to get their EIP. Common questions, available resources and recommended action are discussed below.

EIP Amounts for Individuals and Families:

The EIP is based on a taxpayer's filing status, number of eligible dependents and their AGI. Individuals with the filing statuses of single, head of household or married filing separately are eligible for an EIP of up to \$1,200. Married taxpayers who file a joint tax return are eligible for an EIP of up to \$2,400. Taxpayers will receive the full amount of the EIP if their AGI does not exceed the following:

- \$75,000 for individuals filing as single or married filing separately
- \$112,500 for individuals filing as head of household
- \$150,000 for married couples filing joint returns

Taxpayers will receive a reduced payment if their AGI is between:

- \$75,000 and \$99,000 for individuals filing as single or married filing separately
- \$112,500 and \$136,500 for individuals filing as head of household
- \$150,000 and \$198,000 for married couples filing joint returns.

Additional \$500 Payment for Qualifying Children:

Eligible individuals and families may receive an additional \$500 payment for each qualifying child who is claimed as a dependent on either the 2018 or 2019 federal income tax return used by the IRS to calculate the payment. The claimed dependent(s) must meet each of the following tests:

- Relationship - the child is a son, daughter, stepchild, eligible foster child, brother, sister, stepbrother, stepsister, half-brother, half-sister, or a descendant of any of them (for example, a grandchild, niece, or nephew);
- Claimed as a Dependent - the child was claimed as a dependent on the 2018 or 2019 tax return, if filed;
- Age - the child was under age 17 at the end of the taxable year;
- Citizenship - the child was a U.S. citizen, U.S. national, or U.S. resident alien;
- Residency - the child and eligible recipient must have lived together for more than half the tax year;
- Support - the child must not have provided over half of their own support for the tax year; and
- Identification Number - the child has a valid SSN or an Adoption Taxpayer Identification Number (“ATIN”).

Eligibility for Federal Benefits Recipients

People who receive the federal benefits listed below (and do not normally file a tax return) will receive their EIP automatically, and it will be delivered in the same manner as they receive their monthly benefits:

- Social Security retirement or survivor benefits
- Railroad Retirement
- Social Security Disability Insurance (“SSDI”)
- Supplemental Security Income
- VA Compensation & Pension

For federal benefit recipients with dependent children under 17 years old:

The deadline to claim and receive the additional \$500 for eligible dependents *this year* for these federal beneficiaries has passed. However, by law, if these taxpayers are eligible to claim the additional \$500 for dependent children, then they will be able to do so by filing a 2020 tax return, according to the [latest guidance](#) from the IRS. Lawmakers are attempting to address this issue so that low-income taxpayers may be able to receive the additional payments prior to filing a 2020 tax return. For updates, please check the [IRS website](#) for the latest news.

Eligibility for Non-Filers (Low-Income Individuals and Families)

The EIP is available to qualifying individuals who are not required to, and do not usually, file a tax return, for the following reasons:

- individuals whose income is less than \$12,000
- joint tax filers whose income is less than \$24,000
- individuals with no income;

The IRS has set up an online tool called *Non-Filers: Enter Payment Info Here* ([“Non-Filers tool”](#)) as a way for people to get the EIP if they did not file a tax return in either 2018 or 2019 because their income was below the threshold amounts listed above. Low-income taxpayers who qualify for the Earned Income Tax Credit or other refundable credits *should not use this tool*, but should instead file their 2019 tax return. The *Non-Filer* tool directs individuals or spouses to create an account so that they can submit a simple tax return for 2019. The tool uses the information provided and generates a 2019 tax return that shows \$1.00 in taxable interest. Importantly, the EIP is not tied to any work or employment requirement. People with no income are eligible, including homeless individuals and families.

For low-income individuals and families with dependents who were under the age of 17 at the end of 2019:

Individuals or married couples who have a qualifying dependent must claim the dependent when using the *Non-Filers* tool to receive the additional EIP this year.

How Non-Filers Can Receive The Payment:

To receive payment, those who are eligible must provide the IRS with personal information, along with a valid email address. The IRS advises that non-filers provide their information as soon as possible to receive the payment. The [Non-Filers tool](#) is available in both [English](#) and [Spanish](#). Non-filers will need the following information to complete the form (entries on the form are not saved, so it must be completed once started):

- Full name and current mailing address
- Date of birth and valid SSN
- Bank account number, bank account type (checking or savings), and the routing number, if the non-filer has one
- Identity Protection Personal Identification Number (“IP PIN”) received from the IRS earlier this year, if the non-filer has one (if the taxpayer has lost this information, then they may visit the IRS website to [retrieve their IP PIN](#))
- Driver’s license or state-issued ID, if the non-filer has one
- For each qualifying child during 2019: name, SSN or Adoption Taxpayer Identification Number and their relationship to the non-filer or spouse

What Happens After Non-Filer Form Submission:

After the non-filer form is submitted, the non-filer will receive a confirmation email, which has important information regarding the status of a submitted form: whether the form has been

successfully completed, or if there is a [problem](#) and how to correct it. The form will then be transmitted to the IRS for processing and distribution of the EIP.

What if I don't have a bank account or a driver's license (or a state-issued ID)?

Non-filers without a bank account or those who do not want to provide this information to the IRS may leave that space on the form blank. The IRS will send a paper check to the mailing address provided by the non-filer. Non-filers without a driver's license or a state-issued ID should also leave that space on the form blank. The IRS issued guidance on May 15, 2020, offering non-filers without bank accounts the ability to create an online bank account and elect to receive their EIP by direct deposit. The IRS and Federal Deposit Insurance Corporation ("FDIC") worked together to create the new program. Non-filers can visit the [FDIC's website](#) for more information and options on setting up an online bank account.

7.6 FAQs - Banking & Financial Issues

Q. 7-6 Will I receive the EIP if I owe the IRS or another government agency debt?

Yes, taxpayers who owe the IRS will receive the EIP. Taxpayers who owe another government debt (for example, student loans, and overpayments for unemployment or food stamps) will also receive the EIP. The only exception is for taxpayers who owe child-support arrears. The EIP will be intercepted and offset to the back-due child support. Additionally, once the EIP is deposited into a bank account, creditors would be able to garnish those funds under federal law.

Q. 7-7 Where will my EIP be sent?

For taxpayers who received a refund in either 2018 or 2019 and opted for direct deposit, the EIP will be automatically deposited into the bank account on file with the IRS.

For taxpayers who received a refund in either 2018 or 2019 and opted to receive their refund by a paper check, the IRS will send a paper check to the address listed on the most recent tax return.

For taxpayers who did not receive a refund in 2018 or 2019 and owed taxes, even if the taxpayer paid the IRS from a bank account, the IRS will not automatically deposit the Economic Impact Payment but will instead send a paper check to the address reported on the last tax return.

As of May 18, 2020, the U.S. Department of the Treasury announced that some EIPs will be mailed to taxpayers in the form of a [prepaid debit card](#) in lieu of a paper check.

For security reasons, the IRS will send IRS Notice 1444, Your Economic Impact Payment, to the taxpayer's last known address within 15 days after payment. The notice will provide the amount of the payment, the manner in which it was paid, and a telephone number to call if the taxpayer did not receive the payment. Taxpayers should keep this notice for their records and be prepared

to reference it when filing their 2020 tax return. If a taxpayer is unsure whether they are receiving a legitimate letter, the IRS urges taxpayers to visit [IRS.gov](https://www.irs.gov) first to protect against scam artists.

Q. 7-8 When will my EIP paper check arrive?

Eligible recipients who are waiting to receive a paper check can determine delivery dates in two ways.

First, they can log into the [Get My Payment](#) portal to see if the IRS has sent a check to the address associated with the taxpayer, or when the IRS plans to send the check. Eligible recipients will need the following information to verify identity (and to avoid being locked out of the system—the portal allows three attempts before locking the account for 24 hours):

- SSN,
- Date of birth,
- The address listed on last filed tax return, and
- 2019 tax return, if filed, and 2018 tax return.

In some cases, the date is not available on the portal. The deadline to change the method of payment from paper check to direct deposit passed on May 13, 2020. In light of this, the IRS stated it is planning to increase the number of checks sent to taxpayers each week over the course of May and June, anticipating that all payments would be distributed by the end of June. Previously, the IRS had cautioned that payment distribution may take as long as several months. There have been anecdotal reports of some recipients not seeing a date listed in the portal, but then receiving payment on the same day, or soon after.

Second, taxpayers may be able to track their payment through [“Informed Delivery,” the United States Postal Service’s mail-tracking app and service](#). Some limitations apply. To see whether Informed Delivery can be used for a particular mailing address, check the USPS website.

Q. 7-9 Can I choose to receive the EIP by direct deposit instead of a paper check?

For taxpayers who have already filed a 2019 tax return and are expecting their refund to be issued by paper check, the deadline to provide direct deposit information passed on May 13, 2020. As of May 15, 2020, the IRS has not provided more guidance on this.

Taxpayers who have a filing requirement for 2019, but have not yet filed their tax return, or for those who do not have a filing requirement for 2019 or 2018 and have not yet used the *Non-Filer* tool, can still receive the EIP through direct deposit. For those who are required to file a tax return, they must file their 2019 tax return before the extended tax filing deadline, July 15, 2020, or request a filing extension by the same date. For non-filers who are not required to file a tax return, the IRS has not provided any deadline to receive the payment. A non-filer will also be able to claim the EIP by filing a 2020 tax return.

Q. 7-10 I filed taxes in 2018/2019 with my spouse, filing jointly. I have a Social Security Number but my spouse does not. I have not received the EIP even though I am eligible, why?

Unfortunately, taxpayers who filed jointly with a spouse who does not have a SSN are disqualified from receiving the EIP. Both individuals on the jointly filed tax return must have valid SSNs to be eligible to receive the payment. Individual Tax Identification Numbers (“ITIN”), which are generally issued to non-American citizens for tax filing purposes, do not satisfy the requirement. This also disqualifies the taxpayer from receiving additional payments for qualifying dependents.

There is one exception to the rule: if either spouse was a member of the U.S. military during the 2019 taxable year, only one spouse needs to have a valid SSN to qualify for the EIP.

There is ongoing legal action regarding this issue but as of June 2020, the rule stands.

Q. 7-11 The IRS tool “Get My Payment” does not recognize me, even though I filed in 2018/2019 and have the same information.

To use *Get My Payment*, eligible recipients must first verify their identity by answering security questions. First, the IRS requests a SSN, birthday, and mailing address reported on the eligible recipient’s last return (either 2019 or 2018). If the information entered does not match IRS records multiple times, the system will lock entry for 24 hours for security reasons. Recipients who are unable to verify identity will not be able to use *Get My Payment*. For eligible taxpayers who successfully verify those first security questions, the IRS will continue to a second identity verification page. The second page requests information related to their tax return: the AGI and refund amount, as listed on the latest tax return. Again, if the information entered does not match IRS records, the system will lock entry.

Eligible recipients may want to check their most recent tax return or consider if there is a different way to enter their street address. The IRS suggests eligible recipients verify how their address is formatted with the United States Postal Service (“USPS”). Taxpayers can use the [USPS Zip Code Lookup tool](#) to verify the format as it appears with the USPS and use that format when logging onto the *Get My Payment* portal.

Eligible recipients who cannot log into the portal after entering their AGI, refund amount, or amount owed will need to ensure that the amounts are exactly as they appear on the Form 1040 or [tax return transcript](#). According to the IRS, if amounts reported on a 2019 tax return are not accepted, try the amounts reported on the 2018 tax return instead.

Anecdotally, some taxpayers have successfully verified their identity when they input the exact refund amount they received from the IRS. Another method of locating the exact refund amount

is to review the direct deposit information on their bank account history. Sometimes, there are minor differences or errors in the refund amounts as stated on one's Form 1040 and the refund amount actually received, particularly when the difference is a matter of cents. For example, if a refund amount listed on the Form 1040 is \$100.00, but the amount actually received in one's bank account or refund check is \$100.10, try using both numbers.

Even after submitting this information and verifying identity, eligible recipients still may see "Payment Status Not Available." This means the IRS cannot determine eligibility for a payment at this time.

Q. 7-12 Why am I seeing that the IRS tool "Get My Payment" cannot determine the status of my return right now?

This can happen for several reasons, including:

- There is a tax filing requirement, but
 - a 2019 tax return has not been filed yet;
 - the IRS has not finishing processing the filed 2019 tax return; or
 - the portal does not have the eligible recipient's data yet.
- There is no tax filing requirement, but the information entered using the *Non-Filer* tool has not been processed yet.
- The person is not eligible to receive the EIP.

Taxpayers who provided their information by either filing a recent tax return or using the *Non-Filers* tool will be able to use the *Get My Payment* portal to track their payment, including the method of delivery and the expected payment date. The IRS is working on updates to allow more people to use this feature. The IRS updates *Get My Payment* data once per day, overnight, so there is no need to check more often; doing so may cause a security lock-out.

Q. 7-13 My address has changed since I filed my last return.

For eligible recipients who have not filed their 2019 tax return: enter the new address on the 2019 tax return. The IRS updates records when the return is processed. Tax returns should be filed electronically, whenever possible, for faster processing.

For eligible recipients who have filed their 2019 tax return but did not receive a refund by direct deposit, payment will be mailed to the last known address on file with the IRS. This is generally the address on the most recent return or as [updated through USPS](#).

Q. 7-14 My bank account information has changed since I filed my last return.

If the IRS does not have the correct bank account information, or the financial institution rejected the direct deposit, the payment will be returned to the IRS and a paper check will be mailed to the taxpayer's last known address on file with the IRS.

If the payment has been processed, the *Get My Payment* portal cannot be used to change bank account information.

Q. 7-15 I'm the victim of tax preparer fraud or the victim of tax-related identity theft and the direct deposit information listed on Get My Payment doesn't belong to me.

If an eligible recipient's EIP has been deposited or mailed to someone other than the taxpayer, the person may be the victim of tax return preparer fraud or tax-related identity theft. The taxpayer should contact the Identity Protection Specialized Unit at (800) 908-4490. The individual can report the theft to the IRS and the Federal Trade Commission ("FTC") by visiting the [FTC website](#), which will direct them to visit [IdentityTheft.gov](#). Here, the taxpayer can complete both the FTC Identity Theft Report and [IRS Form 14039 Identity Theft Affidavit](#) online. After submitting these forms, the taxpayer will be given the opportunity to prepare a recovery plan.

Q. 7-16 Do college students claimed as dependents qualify?

Generally, no. Many college students are claimed as dependents on tax returns. If a student was claimed as a dependent on someone else's tax return for 2019, they are disqualified from receiving the EIP. Similarly, the taxpayer who claimed a college student as a dependent will not be eligible to receive the additional \$500 payment if the college student was 17 and older at the end of the 2019 tax year. If the student was claimed as a dependent on someone else's 2018 tax return, but can file their own tax return for 2019, then that student should file their 2019 tax return electronically and input direct deposit information. If the student cannot be claimed as a dependent by anyone in 2020, then they may be eligible to claim the credit by filing a 2020 tax return.

7.7 Caution: Be Aware of EIP Scams

There have been reports of scammers attempting to steal EIPs. People should only use the official, secure IRS website (which ends in .gov) when sharing personal information to request the EIP. Individuals should not provide their personal information to any other source claiming to be able to help obtain the EIP.

The IRS will never call, text, or email regarding the EIP, or for any other matter. Callers claim to be IRS employees but they are not. They pretend to be IRS employees by using fake names and fake IRS identification badge numbers, and they may know some personal information about the people they are calling in order to convey they are a government authority. They sometimes even alter the caller ID to make it look like the IRS is calling. They might threaten people with arrest, deportation, or suspension of a business or driver's license. Or, victims may be told they have a refund due and proceed to obtain personal and banking information from the taxpayer—this is

how the callers try to trick victims into sharing private personal information. The IRS will never issue a refund or accept payment through any type of gift card.

More information on the variety of scam methods and how to report scam attempts is available [here](#) and [here](#).

7.8 Guides for Partner Organizations

The IRS released guides for partner organizations on May 15, 2020 to assist in outreach efforts. The IRS has focused on partnering with organizations that serve veterans, homeless populations, low-income taxpayers, as well as non-English speaking communities. The resources are available at [EIPs: Partner and Promotional Materials](#).

The IRS has also released a “special partner toolkit” available in both [English](#) and [Spanish](#). These toolkits are intended to explain various items related to EIPs that partner groups can share.

Following reports of issues related to limited language options in COVID-19 tax relief materials, the IRS is now also working closely with partners in the tax community to translate key information in over two dozen languages. Check the IRS press release website for up to date information.

Additionally, the IRS is increasing its social media presence to promote new information on Twitter, Facebook, Instagram, and YouTube. On YouTube, the IRS offers video tax tips in [English](#), [Spanish](#), and [American Sign Language](#).

The IRS has also broadened its capacity by working with other federal agencies to share information, including the Treasury Department, the Bureau of Fiscal Service to the Social Security Administration, and the Department of Veterans Affairs. In addition, the following federal agencies have supplemental information of interest to taxpayers:

FDIC: To help people without bank accounts obtain an EIP, the FDIC website has created a [new page to provide options for eligible recipients](#). It includes options for finding a bank and opening an online account.

Consumer Financial Protection Bureau (“CFPB”): CFPB has opened up a [website](#), which includes several videos related to EIPs and other COVID-19 related information.

7.9 Other Tax Relief (Common After Disasters)

Victims of Tropical Storm Imelda, which took place from September 17 to 23, 2019 in Texas, may qualify for tax relief. More information is available [here](#). Individuals who reside or have a business in Chambers, Harris, Jefferson, Liberty, Montgomery, Orange and San Jacinto counties are eligible to receive relief.

Victims of the severe storms and flooding that took place on June 24-25, 2019 in Texas may qualify for tax relief. More information is available [here](#). Individuals who reside or have a business in Cameron, Hidalgo and Willacy counties are eligible to receive relief.

The IRS website has a section on [disaster-related tax issues](#) where it posts all of the latest information related to tax relief available to disaster survivors. The page provides a comprehensive set of FAQs for disaster survivors. The IRS also maintains a [“Disaster Relief Resource Center for Tax Professionals”](#) on its website to provide resources for advocates assisting disaster survivors with tax issues. Advocates and survivors should use the IRS webpage as a starting point for their research. In recent disasters, the American Bar Association has shared with pro bono tax advocates the disaster tax chapter of its treatise, “Effectively Representing Your Client Before the IRS.”

Shortly after a disaster declaration, the IRS posts notices and news releases on its website describing filing and payment deadline extensions and other tax relief for affected taxpayers. All applicable IRS notices and news releases should be read carefully to determine which deadlines are extended, for how long, and for which taxpayers.

The IRS also staffs a Disaster Assistance Hotline (866) 562-5227 for general customer service inquiries relating to disaster relief. Calls are only answered on weekdays from 7:00 a.m. to 7:00 p.m., local time. Callers may need to provide their own interpreter. IRS computer systems automatically identify taxpayers located in covered disaster areas and apply automatic filing and payment relief. Taxpayers who reside or have a business outside the covered area, or who moved to the covered area after their last contact with the IRS must call the Disaster Assistance Hotline to request tax relief.

During the disaster relief period, the IRS suspends mailing of notices to taxpayers; suspends collection activities (including liens, levies, and seizures); examination activities; and applies special penalty and interest computations. In past years, Congress has provided for special treatment of retirement plan distributions for taxpayers in disaster areas, i.e., waiving the 10% early distribution penalty. However, caution should be taken to ensure this applies to future disasters because this is an act of Congress, not the IRS.

For all federally declared disasters, installment agreement payments that come due during the disaster are automatically suspended and the taxpayer must resume payments the month after the disaster relief period ends. However, taxpayers enrolled in automatic direct debit installment agreements must take action to prevent automatic drafts during the disaster relief period. During the COVID-19 pandemic, the [IRS has advised](#) taxpayers to contact their banking institutions to stop future payments during the disaster period.

Disaster survivors will need quick access to prior year tax returns to file amendments to claim disaster losses in a prior year as allowed under 26 U.S.C. § 165(i), to prove business income for business interruption insurance claims or for any number of other disaster-related exigencies. The IRS will waive the usual fees and expedite requests for copies of previously filed tax returns and tax return transcripts. Disaster survivors should write the assigned disaster designation (e.g., “Texas, Hurricane Harvey”) in red ink at the top of Form 4506 (Request for Copy of Tax Return) or Form 4506-T (Request for Transcript of Tax Return), as appropriate, to avoid fees and expedite processing. Taxpayers or their authorized representative may call IRS Disaster

Assistance Hotline to request a Tax Return Transcript. Account transcripts and wage and income transcripts can be requested free of charge by calling (800) 908-9946 or [online](#). Account transcripts will show whether a tax return has been filed and wage and income transcripts will provide income information reported to the IRS by third parties, which will assist in preparing missing tax returns. The tax return transcript will show the information that the taxpayer included on their original return, which will assist in filing an amended tax return (Form 1040X).

Taxpayers claiming disaster losses on amended tax returns to access cash refunds should write the disaster designation in red across the top of Form 1040X to ensure the IRS applies expedited processing procedures. The average expedited processing time is sixty days; however, during the COVID-19 pandemic, the IRS stopped opening mail so the processing time will be much longer. Taxpayers experiencing economic hardship should apply for a manual refund through the IRS Taxpayer Advocate Service. A manual refund can generally be processed within one to two weeks. Apply by faxing a completed IRS Form 911 to your local Taxpayer Advocate Office. In such a case, do not file the amended tax return by mail. Instead, attach it to the Form 911 so it can be manually input by the taxpayer advocate assigned to assist with the manual refund request. Visit www.irs.gov/taxpayer-advocate for more information.

Qualified disaster relief payments under 26 U.S.C. § 139 are not taxable income to disaster survivors if the reimbursed expense is not also reimbursed by insurance or otherwise and has not been deducted on a prior year tax return. Qualified disaster relief payments include payments to reimburse reasonable and necessary personal, family, living, or funeral expenses incurred as a result of the disaster, reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence (even if rented), and expenses incurred to repair or replace contents of a personal residence. Disaster relief payments may also qualify under the “general welfare exclusion” in § 139(b)(4).

Many disaster survivors have lost some or all of their records in the disaster. In such situations, taxpayers will need to reconstruct business records or collect other documents adequate to prove eligibility for tax deductions and credits, apply for federal disaster assistance, and substantiate insurance reimbursement claims. IRS Publication 2194 Disaster Losses Kit for Individuals provides more information on how to reconstruct records after a disaster. The publication and additional information can be found [here](#).

8.0 CONSUMER PROTECTION ISSUES

8.1 Overview

Disasters are breeding grounds for unscrupulous consumer practices. In the stress after a disaster, even the most sensible people can be taken in by a fraud. Disaster victims who are seniors, disabled, or limited in speaking or reading English are particularly vulnerable to scams. In addition, the financial stress of a disaster can push many people into financial instability and collections. Consumer information can help prevent victimization.

IMPORTANT NOTE: The information contained in this section is designed to help volunteer attorneys provide preliminary guidance to victims of consumer fraud or those with debtor/creditor problems in Texas.

It can also be helpful for a consumer to make a complaint to the Consumer Finance Protection Bureau, the Federal Trade Commission, or Texas Office of the Consumer Credit Commissioner. For issues with insurance companies or adjusters, including public adjusters, the [Texas Department of Insurance](#) takes complaints. The Texas Attorney General also takes and compiles complaints against businesses although they make it clear that they do not help people get damages.

8.2 Most Common Issues

- Deceptive Trade Practices / Door-to-Door Sales
- Debt Collection / Credit Reporting
- Price Gouging
- Certain Commodities During a Disaster
- Home Equity Fraud
- Home Remodeling and/or Repair / Mold Remediation Fraud (see FAQs)

8.3 Summary of Relevant Laws

A. **Texas Deceptive Trade Practices Act**

The Texas Deceptive Trade Practices Act (DTPA), [Tex. Bus. & Com. Code § 17.41 et seq.](#), protects consumers against false, misleading, or deceptive trade practices, including unconscionability and breach of warranty. The DTPA provides that a consumer who is damaged by such unlawful practices has a private right of action and may recover economic damages, injunctive relief, other equitable orders, and attorney's fees. If the illegal acts are committed knowingly or intentionally, the aggrieved consumer may obtain mental anguish and additional damages not to exceed three times the economic damages.

False Claims of COVID-19 Vaccines/Tests. The COVID-19 pandemic has seen numerous scams relating to vaccines and tests kits. The FTC advises that there are currently no products proven to treat or prevent COVID-19. Additionally, the FDA has announced approval for only one COVID-19 home test kit, and this test kit requires a doctor's order. Most tests kits being advertised have not been approved by the FDA, and are not necessarily accurate. Consumers should be wary of any claims to a COVID-19 vaccine or test. The FTC encourages all individuals who see a product claiming to treat, cure or prevent Coronavirus to report that product to [ftc.gov/complaint](https://www.ftc.gov/complaint).

For further information regarding scams involving COVID-19 vaccines and test, please visit the Texas Attorney General’s website on the topic at <https://www.texasattorneygeneral.gov/consumer-protection/covid-19-consumer-issues> and the FTC’s website on the topic at <https://www.ftc.gov/coronavirus/scams-consumer-advice>.

B. Laws on Home Solicitation Contracts and “Buyer’s Remorse”

Texas Door-to-Door Sales Law. It is important to know when a sale constitutes a home solicitation because special laws cover this kind of sale. In Texas, chapter 601 of the Texas Business & Commerce Code regulates the home solicitation industry and applies to certain consumer transactions in which (1) a merchant engages in a personal solicitation of a sale to a consumer at a place other than the merchant’s place of business or (2) a consumer agrees or offers to make a purchase at a place other than the merchant’s place of business. Texas law requires specific language to be included in contracts and notices of cancellation. A buyer has the right to cancel a home solicitation contract until midnight of the third business day after the day on which the buyer signs the agreement.

If a seller fails to give a buyer notice of the right to cancel the contract, the contract is void. The state door-to-door sales law does not apply to certain transactions, including an insurance sale regulated by the Texas Department of Insurance, sale of real property when (1) the purchaser is represented by a licensed attorney; (2) the transaction is negotiated by a licensed real estate broker; or (3) the transaction is negotiated at a place other than the consumer’s residence by the person who owns the property.

For further information regarding door-to-door sales, please visit the Texas Attorney General’s website on the topic at <https://www.texasattorneygeneral.gov/cpd/door-to-door-sales> and <https://www.texasattorneygeneral.gov/cpd/the-3-day-right-to-cancel-a-purchase>.

FTC Cooling-Off Rule. In addition to Texas state law, the Federal Trade Commission enforces federal requirements related to home solicitation sales pursuant to the Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations, 16 C.F.R. pt. 429 (Cooling-Off Rule). The Cooling-Off Rule applies to sales at the buyer’s home, workplace, or dormitory, or at facilities rented by the seller on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds, and restaurants. The Cooling-Off Rule applies even when a salesperson is invited to make a presentation in the home. Under the Cooling-Off Rule, the salesperson must tell the consumer about cancellation rights at the time of sale. The salesperson also must give the consumer two copies of a cancellation form (one to keep and one to send) and a copy of the contract or receipt. The contract or receipt should be dated, show the name and address of the seller, and explain the right to cancel. The contract or receipt must be in the same language that’s used in the sales presentation. The Cooling-Off Rule does not cover sales that are made as part of a request for the seller to do repairs or maintenance on personal property (purchases made beyond the maintenance or repair request are covered) and sales of real estate.

For further information regarding the Cooling-Off Rule, please visit the FTC’s website on the topic at <https://www.consumer.ftc.gov/articles/0176-buyers-remorse-when-ftcs-cooling-rule-may-help>.

C. Debtor/Creditor

Often disasters can trigger financial crises as victims fall behind in their bills. Missed payments or collection actions can damage their credit ratings.

Disaster victims should not avoid dealing with their financial situations even though taking stock of their increased costs and decreased assets can be very stressful. Attorneys working with disaster victims need to be aware of the following:

- (1) Many people take great pride in paying off debt and having a good credit score. Despite the fact that the disaster was unavoidable and they are not at fault, they will feel embarrassment and reluctance to face their own circumstances.
- (2) Good credit is necessary for better interest on loans, and that is it. People should not dip into retirement or take out home equity loans in order to make minimum payments and “keep up their credit”. Also, credit dips down, but will return. Credit scores are mostly impacted by the last 36 months of information even though more information stays on a credit report.
- (3) Some debts should be paid ahead of others. This may seem obvious but is something that people in stress often do not do. Housing – be it rent or a mortgage – should be paid. Car payments also need to be paid, although insurance may be even more necessary. Both car loans and mortgages will often have a bit of flexibility if a consumer is proactive and calls the lender, although this is not always the case. Any unsecured debts such as credit cards and personal loans and payday loans should be the last to be paid when a consumer is tight on funds.

Some creditors will agree to reduce, reschedule, or even postpone payments for certain periods of time, so when a consumer cannot make a payment, they should reach out to their lender. However, a lender can also become a bully and use the threat of “collections” to influence a disaster victim to make payments that are financially unwise for their situation. Any attorney giving advice in this scenario should take care not to feed into a disaster victim’s fear of “bad credit” and missing payments. Sometimes, these things will happen.

Debt relief companies, often now called debt repayment plans, should be very carefully researched and usually avoided. Often motivated by a goal of avoiding bankruptcy and paying off debts, disaster victims can be enticed into giving their few free dollars to these companies rather than their actual creditors. Texas and federal law have put requirements on these companies, but often a consumer is better off filing bankruptcy or settling loans on their own than dealing with these companies and their high fees. The Texas attorney general’s website has good information on debt relief companies at <https://www.texasattorneygeneral.gov/consumer-protection/financial-and-insurance-scams/debt-collection-and-relief/debt-relief-and-debt-relief-scams>.

Credit reporting is governed by the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, which requires that credit reporting agencies furnish a free copy of a consumer’s credit report on request within thirty days after the consumer is notified of an adverse action. Credit reporting agencies also have a statutory obligation to investigate consumers’ claims. Texas law governing credit reporting is found at chapter 20 of the Texas Business & Commerce Code.

Debt Collection Protection. The Texas Fair Debt Collection Practice Act (chapter 392 of the Texas Finance Code) protects individuals from unfair debt collection practices, such as:

- Threats of violence or other criminal acts
- Using or profane language
- Falsely accusing the consumer of fraud or other crimes
- Failing to identify who holds the debt
- Using a false name or identification
- Misrepresentation the amount of the debt or its judicial status

For further information regarding unfair debt collection practices, please visit the Texas attorney general's website on the topic at <https://www.texasattorneygeneral.gov/consumer-protection/financial-and-insurance-scams/debt-collection-and-relief/your-debt-collection-rights>.

Collections after Judgments in Texas. Texas has no wage garnishment other than for child support and taxes. The federal government can also garnish wages for defaulted student loans and other federal debts, including federal taxes.

In general, Texas is not an easy place for creditors to collect money or assets, especially from consumers. For example, a collector, even after judgment, cannot take a consumer's:

- (1) Homestead – home where consumer has lived over one year;
- (2) One vehicle per person of driving age in the home;
- (3) Personal possessions;
- (4) Tools of the trade.

However, creditors with a judgment can use a Writ of Garnishment or a Receivership to take all the money from a consumer's bank accounts.

A bankruptcy can wipe out many debts, and the presence of a judgment will not affect the dischargeability of the debt in bankruptcy. Many consumer bankruptcy attorneys offer a free initial consultation in which a consumer can find out if they are or are not a good candidate for bankruptcy. More information on this can be found at the National Association of Consumer Bankruptcy Attorneys website at <https://www.nacba.org/what-we-do/consumer-assistance/>.

For further information regarding debt collection and credit repair, please visit the Federal Trade Commission's page on credit at <https://www.consumer.ftc.gov/articles/0155-free-credit-reports>.

COVID-19 Debtor Protections

1. Mortgage Relief

A new federal law, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, puts in place protections for homeowners with federally backed mortgages:

Individuals have a right to request a forbearance for up to 180 days. Individuals also have the right to request an extension for up to another 180 days. Individuals must contact their loan servicer to request this forbearance. There will be no additional fees, penalties or additional interest (beyond scheduled amounts) added to the requester's account. Individuals do not need to submit additional documentation to qualify other than their claim to have a pandemic-related financial hardship.

Mortgages that qualify for these protections include:

- Mortgages owned or securitized by Fannie Mae or Freddie Mac.
- Mortgages insured by the Federal Housing Administration ("FHA"). This includes standard mortgages and Home Equity Conversion Mortgages, which are also called "reverse mortgages."
- Mortgages guaranteed or insured by the Veterans Administration ("VA").

- Mortgages made, guaranteed, or insured by the Department of Agriculture/Rural Housing Service.
- “Section 184” and “Section 184A Mortgages”. These are mortgages for Native Americans, Alaska Natives, and Native Hawaiians guaranteed by the Department of Housing and Urban Development’s Office of Loan Guarantee.

For further information regarding mortgage relief during the COVID-19 pandemic, please visit the Consumer Financial Protection Bureau’s website on the topic at <https://www.consumerfinance.gov/about-us/blog/guide-coronavirus-mortgage-relief-options/>.

2. *Student Loans*

CARES Act § 3513 provides relief for student loan borrowers with Direct Loans and also for FFEL loans, but only those FFEL loans currently owned by the U.S. Department of Education. Critically, not protected by the CARES Act are borrowers with Perkins Loans and borrowers whose FFEL loans are still held by banks or guaranty agencies. One estimate is that there are upward of 9 million student loan borrowers not covered by the Act.

Direct Loan and covered FFEL borrowers will have their payments suspended through September 30, 2020. *See* CARES Act § 3513(a). While student loan payments are suspended, the loans shall not accrue any interest and the month of a suspended loan payment will be treated as if a loan had been made for purposes of loan forgiveness and loan rehabilitation. *See* CARES Act § 3513(b), (c). The suspension period should not result in negative credit reporting, and also involuntary collection of the loan will be suspended—no wage garnishments, tax intercepts, offset of federal benefits, or any other collection activity. *See* CARES Act § 3513(d), (e). Covered borrowers will be provided notices of all of these rights within fifteen days of the CARES Act’s March 27 enactment. *See* CARES Act § 3513(g).

The protections mentioned above do not extend to private student loans.

D. Fair Credit Billing Act

Under the federal Fair Credit Billing Act (FCBA), [15 U.S.C. § 1666 et seq.](#), if a consumer paid for a purchase with a credit card and a billing dispute arises about the purchase (*e.g.*, the merchandise shipped was not what was ordered), the consumer can notify the credit card company that he wants to dispute the purchase. A sample dispute letter can be found at the following link, under the section titled “Exercise Your Rights”: <http://www.consumer.ftc.gov/articles/0219-disputing-credit-card-charges>. The dispute letter must be addressed to the credit card company at the address provided for “billing inquiries,” which is typically specified on the billing statement. In addition, the letter must be received by the credit card company no later than sixty days after the first bill containing the disputed amount is mailed. The credit card company must acknowledge the dispute in writing within thirty days after receiving the dispute letter, unless the problem has been resolved. The credit card company must resolve the dispute within two billing cycles (but not more than ninety days) after receiving written notice from the consumer. The consumer may withhold payment of the amount in dispute until the dispute is resolved, but the consumer is still required to pay any part of the bill that is not in dispute.

Note: Disputes about the quality of goods and services are not “billing errors,” so the dispute procedure does not apply. However, if a consumer buys unsatisfactory goods or services with a credit card (or the sixty-day period for sending notice of a billing error has expired), a consumer may have other rights under the Act.

For further information about the FCBA, visit the FTC's website on the topic at <https://www.consumer.ftc.gov/articles/0219-disputing-credit-card-charges>.

E. Price Gouging

Section 17.46(b)(27) of the Texas Business and Commerce Code makes it a deceptive trade practice to take advantage of a disaster by selling or leasing fuel, food, medicine, or another necessity at an exorbitant or excessive price or even demanding exorbitant or excessive prices for these items. This statute can be enforced privately, by the attorney general, or by district and county attorneys.

The Texas Attorney General has advised that charging excessive prices for necessities when an emergency has been declared by the governor can constitute price gouging. Examples of such necessities include toilet paper, sanitizer, and personal protective equipment. The Texas Attorney General encourages reporting of such price gouging at <https://www.texasattorneygeneral.gov/consumer-protection/file-consumer-complaint>.

For further information about price gouging, please visit the Texas attorney general's website at <https://www.texasattorneygeneral.gov/cpd/price-gouging>.

F. Disaster Scams and COVID-19 Scams

Consumers should be aware of scams that have arisen or increased in prevalence during the COVID-19 pandemic:

- IRS Scams, in which perpetrators pretend to be IRS employees to glean financial information from the victim.
- Stimulus Check Scams, in which perpetrators pretend to be government employees in order to glean financial information or extract payment with the promise of a stimulus check.
- Puppy Scams, in which perpetrators extract payment from victims for nonexistent pets.
- Work-at-home scams, in which perpetrators extract financial information and payment from victims with the promise of a nonexistent work-at-home job.

Chapter 17 of the Texas Business and Commerce Code makes such scams illegal under state law.

The Texas Attorney General encourages any individuals affected by such scams to file a complaint at <https://www.texasattorneygeneral.gov/consumer-protection/file-consumer-complaint>. The FTC also encourages individuals to report scams at [ftc.gov/complaint](https://www.ftc.gov/complaint).

For further information regarding scams involving COVID-19, please visit the Texas Attorney General's website on the topic at <https://www.texasattorneygeneral.gov/consumer-protection/covid-19-consumer-issues> and the FTC's website on the topic at <https://www.ftc.gov/coronavirus/scams-consumer-advice>.

G. Home Equity Fraud

Home equity is the market value of a home minus the mortgage and other liens on the home. For example, if a home's market value is \$100,000 and the mortgage and all liens are \$80,000, the equity is \$20,000 (\$100,000 - \$80,000 = \$20,000).

Home equity fraud is the taking of a homeowner's equity by fraudulent means. Victims of home equity fraud are most often elderly persons, particularly widows over age seventy, minorities with limited English skills, or homeowners with fixed incomes below \$24,000.

There are numerous protections for consumers with home equity loans, most of which are in the Texas Constitution, Article 16 § 50(a), with important provisions at § 50(q).

For further information regarding Home Equity Fraud, please visit the Texas Attorney General's website on the topic at <https://www.texasattorneygeneral.gov/consumer-protection/financial-and-insurance-scams/loan-and-mortgage-scams>.

H. Identity Theft

The crime of identity theft includes obtaining, possessing, or using the identity of another individual – regardless of whether they are living or dead and regardless of their age (infant, minor, adult or elderly) – with the intent to harm or defraud someone. However, the fact is that most of the time when a person's credit has errors, it is either the credit reporting agency or a collector causing the error, or it is a family member or friend who used their identity. Even when it is a stranger who stole someone's identity, proof of a crime is NOT necessary to get help in clearing one's name.

If an individual suspects their identity has been stolen, that individual should take the following steps:

- Call or email the fraud departments of the companies, banks or credit unions where accounts have been compromised. Explain that someone stole your identity. While a freeze on an account may help, the best practice is to open new accounts.
- Contact any of the three credit reporting agencies (Equifax, Experian, TransUnion) and ask that a free fraud alert be placed on their credit report. Individuals should also ask for a free credit report.
- Change the passwords, PIN numbers, and login information for all of their potentially affected accounts, including their email accounts, and any accounts that use the same password, PIN, or login information.
- Contact their police department, report the crime and obtain a police report.
- Go to the webpage of the Federal Trade Commission, report the ID theft and create an identity theft recovery plan: <https://www.identitytheft.gov/Assistant>.
- Decide whether they want to place a security freeze on their credit report.
- Review their credit report to correct any errors and identify any new accounts that were opened in their name, and then send a dispute letter to the credit reporting agencies such as Experian, Equifax and TransUnion. The business can be cc'd with the dispute letter, and it is good to include evidence if it exists (such as utility bills with a different address than that given in the false account) as well as a clear explanation. No specific legal language is required or even encouraged for a dispute letter, which should come directly from the affected individual.

- Review their other credit card and bank statements and take action to remove or dispute unauthorized charges or debits.
- If taxes or the CARES Stimulus payment are involved, then the IRS website has specific guidance: <https://www.irs.gov/newsroom/taxpayer-guide-to-identity-theft>
- Consider other steps they may need to take to address specific problems such as reporting a misused Social Security number or clearing their name of criminal charges.

Under chapter 521 of the Texas Business and Commerce Code, a victim of identity theft has the option of seeking a court order declaring that he or she is a victim of identity theft. If an individual is granted this type of court order, he or she may submit it to private businesses and to governmental entities to help correct any records that contain inaccurate or false information which resulted from the identity theft. However, remember that this is not usually required and may not be the most efficient mechanism for clearing wrong information.

For further information regarding Identity Theft, the federal website identitytheft.gov has information and forms.

8.4 Regulatory Agency Directives / Announcements

- Price gouging: <https://www.texasattorneygeneral.gov/cpd/price-gouging>
- Consumer protection – home solicitation:
<https://www.texasattorneygeneral.gov/cpd/door-to-door-sales>;
<https://www.texasattorneygeneral.gov/cpd/the-3-day-right-to-cancel-a-purchase>; and
<https://www.consumer.ftc.gov/articles/0176-buyers-remorse-when-ftcs-cooling-rule-may-help>
- Fair credit billing: <https://www.consumer.ftc.gov/articles/0219-disputing-credit-card-charges>
- Disaster scams: <https://www.texasattorneygeneral.gov/cpd/disaster-scams>
- Mortgage foreclosure “rescue”: <https://www.texasattorneygeneral.gov/cpd/mortgage-fraud>
- Debt collection: <https://www.texasattorneygeneral.gov/cpd/debt-collection>
- Key contacts:

To report a complaint about any of the topics listed above, consumers should contact the Texas Attorney General at 1-800-621-0508 (consumer protection hotline), 1-800-252-8011 (general hotline), or <https://www.texasattorneygeneral.gov/cpd/file-a-consumer-complaint>.

Texas Attorney General: Consumer Division

Website: <https://www.texasattorneygeneral.gov/cpd/consumer-protection>
Consumer Protection Hotline: 1-800-621-0508
General Hotline: 1-800-252-8011

Houston Regional Office
Phone: (713) 223-5886
Fax: (713) 223-5821
808 Travis, Suite 1520
Houston, TX 77002-1702
Contact Information for Other Regional Offices:
https://www.texasattorneygeneral.gov/cpd/cpd_regionals

Better Business Bureau

BBB of Greater Houston and South Texas
Website: <https://www.bbb.org/houston>
E-mail: info@bbbhouston.org
Phone: (713) 868-9500
Fax: (713) 867-4947
1333 W. Loop South, Ste. 1200
Houston, TX 77027

BBB of Southeast Texas
Website: <https://www.bbb.org/southeast-texas>
E-mail: info@bbbsetexas.org
Phone: (409) 835-5348
Fax: (409) 838-6858
550 Fannin Street, Suite 100
Beaumont, TX 77701-2011

8.5 FAQs

Q. 8-1 What can I do to protect myself from unscrupulous contractors?

Before contracting for any services, the consumer should:

- **Verify licensing**, if applicable, with appropriate regulatory agencies. Keep in mind that general contractors for residences are not state licensed, although they may be in your area;
- **Verify company legitimacy** with local Better Business Bureaus and online reviews;
- **Obtain comparison bids** with lists of services provided and material costs;
- Obtain all **estimates in writing**;
- Speak with other customers to **verify satisfaction**;
- **Read all contracts** or service agreements **before signing**; and
- **File complaints** with appropriate regulatory agencies if confronted with potential fraud or abuse.

The telephone number for the Texas Office of the Attorney General's Consumer Protection Hotline is 1-800-621-0508 and general hotline is 1-800-252-8011. Urge consumers to contact the attorney general if

someone calls with what the consumer feels is a scam; an early alert can prevent others from fraud. Urge them to contact consumer reporters of local media outlets to notify them of scams. The Houston Chronicle's newsroom contacts are available at <http://www.chron.com/about/newsroom/>. Local television affiliates' contact information is available at <http://abc13.com/contactus/> or <https://www.fox26houston.com/contact-us>.

[Tex. Bus. & Com. Code § 58.001](#) *et seq.*, regulates the actions of disaster remediation contractors who do not maintain offices within a county or adjacent county where a natural disaster occurred. Unless a disaster remediation contractor has an established office in the county or adjacent county where a property is located for at least one year prior to the contract, a disaster remediation contractor cannot require full or partial payment before beginning work and can only require partial payment reasonably proportionate to work performed.

For further information about home remodeling and selecting a contractor, please visit the Texas attorney general's website on the topic at <https://www.texasattorneygeneral.gov/cpd/home-remodeling-and-repair#besmart>.

Q. 8-2 Should I enter into a lien contract to pay for home repairs?

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

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

The salesperson or contractor then induces the homeowner to sign a lien-contract secured by the home. The loan repayment amounts are higher than what the consumer can afford to pay on a fixed income. Alternatively, the contractor provides inadequate repairs or services and the consumer refuses to pay the note to the finance company.

The consumer should be fully aware that the lien-contract functions like a promissory note. If the homeowner misses only one payment, the creditor may foreclose and sell the home without ever going to court. The most common result is that the homeowner not only fails to have necessary repair work done, but also loses his or her home through foreclosure.

Q. 8-3 Should I consider refinancing my home to pay for home repairs or other expenses?

Because of the increased costs of confronting an emergency, consumers frequently fall behind in their credit payments or overextend themselves to the point that they must choose whether to pay creditors or obtain basic necessities such as food. Such consumers are often approached by finance companies promising to consolidate the homeowner's debt for existing mortgage, credit card debt, car loans, and repair loans. These companies then pressure the homeowner to sign multiple agreements without providing the homeowner sufficient time to review them or consult with anyone.

The negative outcomes of such refinancing schemes include high processing fees, payments to bogus/phantom creditors, and default on the loan. The homeowner often cannot pay both the refinancing costs and basic living expenses, resulting in a situation far worse than before the refinancing.

Lower income and minority borrowers, as well as elderly homeowners, are often targeted by predatory lenders. They encourage borrowers to lie about their income in order to get a loan; knowingly lend the borrower more money than he or she can repay; charge unnecessary fees; pressure borrowers into high-risk loans and use high pressure tactics to sell home improvements; and then finance them at higher interest rates. These predators pounce on desperate situations. A few tips for consumers include:

- Beware of lenders who claim that they are the only hope for a loan or ask borrowers to sign a contract/loan agreement with missing information.
- Beware when lenders say refinancing your home can solve credit or money problems.
- Always interview several contractors and lenders. Check with friends or family for recommendations.
- Research lenders, contractors, appraisers, etc. with the attorney general's office or the Better Business Bureau and review their complaint history.
- Never make false statements on a loan application. Any lender who encourages this is fraudulent and possibly criminal.
- Do not let anyone convince you to borrow more money that you know you cannot afford.
- Attend homeownership education courses. They are available through the U.S. Department of Housing and Urban Development (HUD) or counseling agencies. You can find a list of HUD-approved housing counselors for Texas at <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=TX>.

Q. 8-4 Can I trust my family member or close friend to help me with expenses?

Isolated homeowners who need assistance to maintain their homes frequently are victimized by friends, relatives, or caretakers. They assist the homeowner with household chores, including shopping or taking them on medical visits. Children of elderly parents sometimes seek control of their parents' property for their own uses. Often, these persons use scare tactics to convince the elderly, disabled, or limited English or non-English speaking homeowner to transfer title of the property to them. Sometimes they obtain a power of attorney when a person is very sick. Unbeknownst to the homeowner, the power of attorney holder may convey or encumber the property and keep the proceeds for himself or herself.

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

Q. 8-5 What do I need to know about foreclosure consultants?

Some financial predators prey on persons during the foreclosure process. They claim to be foreclosure experts who offer to assist homeowners after they receive a notice of default. In Texas, once the finance company files a formal lien with the county clerk, the homeowner is deluged by these foreclosure consultants. These financial thieves further encumber the property with liens for fees and extravagant charges. They try to obtain title through a power of attorney or by direct transfer. They take advantage of the homeowner's distress and offer to purchase the home for below market value through

misrepresentations on the value of the home and on encumbrances. They represent to the homeowners that they may stay in the property for the rest of their lives. In fact, after they obtain the property, they sell it and the new owner serves the tenants with eviction papers. Clients should be warned of such scams. Consumers should also be advised of the tips outlined above as ways to guard against fraudulent lenders.

HUD offers foreclosure counselors for free on their website via The Making Home Affordable Program (HAMP). All the information needed to begin the process is located on their website at: <https://www.makinghomeaffordable.gov/pages/default.aspx>. To speak with a housing counselor now, call 888-995-HOPE (4673).

If anybody attempts to charge a consumer money for a modification, the odds are that the consumer is dealing with somebody who is trying to scam him or her.

Q. 8-6 How do I decide which bills to pay first?

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

- **Court-ordered payments**, such as alimony or child support, must be paid on time or jail time could be sought for contempt of court. If clients are unable to pay, 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 a client is on SSD, his or her children should be eligible for “dependents’ benefits,” which may cover the client’s support obligations in their entirety. Check with the client’s local Social Security office.
- **Ongoing services**, such as utilities, telephone service, or health insurance coverage, must be paid or consumers will lose future service or coverage.
- **Items purchased on credit or pledged as security on a loan** can usually be taken if payments cannot be made. However, a lender is unlikely to seek the return of any property unless a borrower misses several payments and is uncooperative. If the consumer needs extra time to make payments, he or she should contact the lender in advance.

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

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.

Q. 8-7 What should I do if I find myself unable to pay all of my bills?

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

1. Total amount owed on a bill, including the interest to be added each year;
2. Amount of monthly payments;

3. Due dates that payments must reach the collector;
4. Address where payments must be mailed; and
5. Whether the collector will remove negative information about the bill from the debtor's credit report.

It is important for debtors to keep a record of phone calls from the collector regarding the past due bill, including the full names of the individuals he or she speaks with and date, time, and details about the conversations. If the debtor arranges a payment agreement, he or she should send a brief letter confirming the terms of the payment plan. The debtor should always keep copies of any letters and payments sent to the collector. Letters to the collector should be sent via certified mail. Consumer Credit Counseling Services may negotiate with collectors on behalf of debtors for little or no fee. To locate a credit counselor, visit <https://www.consumer.ftc.gov/articles/0153-choosing-credit-counselor>.

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

Q. 8-8 What do I do if I have no ability to pay my creditors?

Some debtors who have no employment income or prospects for such income might be considered "judgment proof." Such people own no real estate, no personal property of significant value, 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.

Bankruptcy may become a last resort option for disaster victims who cannot satisfy their creditors. Filing bankruptcy will not necessarily cancel all debts. It is recommended that individuals wishing to pursue bankruptcy proceedings be referred to a State Bar-certified lawyer referral service where an experienced bankruptcy attorney can be identified. For information about lawyer referral call the State Bar of Texas at 800-252-9690 or visit the State Bar's website at https://www.texasbar.com/AM/Template.cfm?Section=Lawyer_Referral_Service_LRIS.

Q. 8-9 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 nonexempt 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.

Under federal and state laws there are certain types of income and property are exempt from collection, regardless of how much is owed and regardless of whether or not there is a bankruptcy. The most important of these are:

- In Texas, a person's homestead is protected from most collections;
- 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);
- The proceeds and avails from a life insurance policy;
- Necessary household appliances and furnishings;
- Necessary personal items and clothing;
- Necessary medical equipment;
- If working, any tools needed for the job;
- A two-wheeled, three-wheeled, or four-wheeled motor vehicle for each member of a family or single adult who holds a driver's license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the non-licensed person;
- Farming or ranching vehicles and implements;
- Personal property for a family that has an aggregate fair market value of not more than \$100,000 exclusive of any liens, security interests, or other charges encumbering the property; or
- Personal property owned by a single adult and has an aggregate fair market value of not more than \$50,000, exclusive of any liens, security interests, or other charges encumbering the property.

If all property and income is exempt, then the debtor should notify creditors.

9.0 INSURANCE ISSUES

9.1 Overview

When a disaster causes major damage to your property, you should contact your insurance agent or company as quickly as possible because your policy requires it, and there are usually deadlines for reporting a loss and filing a claim. If the damage is only minor, consider paying for it out of pocket for two reasons: If the damage is below your deductible your insurer won't pay for it. A claim that goes on your record can result in getting charged higher premiums in the future.

Most major insurance companies offer toll-free claim reporting hotlines. If you can't find yours, check your state Department of Insurance website. Insurers often set up mobile disaster units close to affected areas where you can meet with a representative in person. There are also two free sources of insurance help available to Texas through government agencies:

Texas Department of Insurance (www.tdi.texas.gov/general/contactus.html)

1-800-252-3439

Email: consumerprotection@tdi.texas.gov

Website: www.tdi.texas.gov/consumer

Mail: Consumer Protection MC 111-1A, P.O. Box 149091, Austin, TX 78714-9091

Texas Office of Public Insurance Counsel <https://www.opic.texas.gov/>

Phone: 1-877-611-6742

Email: help@opic.texas.gov

Mail: Office of Public Insurance Counsel, William P. Hobby Building, 333 Guadalupe, Suite 3-120, Austin, TX 78701-3942

If you are approached by anyone who claims to be working on behalf of the government, the Texas Department of Insurance, or your insurance company and that person asks for money to help expedite your claim, that should be a red flag. Insist on seeing official photo identification and immediately report this to your insurance company or the State of Texas Department of Insurance.

You may be approached by a public adjuster (PA) who will offer to assist you in handling or expediting your insurance claim. They generally charge you a percentage of your insurance benefits, not by the hour. A PA can help an insured prepare, present, and settle a home insurance claim. Their fee in Texas is capped at 10 percent of the insurance settlement. They must be licensed. To check to see if a PA is licensed, you can e-mail License@tdi.gov or call 512-676-6500. If you choose to use a PA,—choose someone licensed and experienced and check their references. If you decide to hire a professional to negotiate with your insurer on your behalf, that person should not have a conflict of interest or be looking to financially benefit from repairing, rebuilding, or salvaging your home.

Your insurance policy contains limits on how much you can collect for repairing and replacing damaged or destroyed property. It is important to get a general understanding of what those limits are before hiring or agreeing to pay any professional in connection with your loss and insurance claim. Disputes between property owners and insurance adjusters over the amount and cost of necessary repairs are very common. Consumer advocates recommend that a property owner get at least two estimates from licensed local repair professionals and compare them with the insurance company's offer. It is best to reach an agreement on the value of your loss with your insurance company before beginning repairs.

In addition to the maximum dollar amounts your insurer will pay for a damaged or destroyed home, contents, car, boat, etc., there are also limits on whether they will pay the brand-new current cost to replace or only the as-was/used cost. Some items will be covered for their Replacement Cost Value (“RCV”, brand new). Some items will be covered for their Actual Cash Value (“ACV” used/as-was). These limits can be confusing. Read and re-read your policy as best you can and stand up for your right to be reimbursed fairly.

Remember that all of the following information and answers to FAQs do not substitute for the insurance contract you signed. **It is important that you read your insurance policy very carefully.** For more information on your insurance legal rights as a property owner in Texas, visit the nonprofit United Policyholders’ webpage at: <https://www.uphelp.org//pubs/your-insurance-legal-rights-property-owner-texas>.

9.2 Flood Insurance

If water damages your property, coverage for repairs will depend on the source of the water and the wording in your insurance policy. Standard homeowner’s insurance policies generally cover damage from sudden and accidental leaks, overflowing toilets, washing machines, dishwashers, rain and wind-driven rain, **but not flooding**. How your policy defines “flooding” is important. Chances are, if your property is damaged by waves from a hurricane storm surge or a body of water that overflows its banks, your insurer will reject your claim unless you have a flood insurance policy in addition to your home insurance policy.

If you have a flood insurance policy, it was probably sold to you through the National Flood Insurance Program (NFIP), even if it has the name of an insurance company on the paperwork. The NFIP is a federal program created by Congress that private insurance companies participate in. The program is administered by the Federal Emergency Management Agency (FEMA) under the Department of Homeland Security, but NFIP policies and claims are handled by private insurance companies. If you have a flood loss and make a claim, an adjuster will be assigned and you should work with them to reach a fair settlement, just as you would with a standard home insurance claim. Again, you have the right to hire your own representative (a public adjuster).

NFIP policies provide a set limit of up to \$250,000 for structure repairs and \$100,000 for contents replacement. You must give prompt written notice of a loss by submitting a signed and sworn proof of loss form within 60 days after the loss occurs. After some large-scale disasters, FEMA has extended that deadline, but otherwise it is strictly enforced.

For the proof of loss you list and value all your lost or damaged property. Your insurance adjuster should give you the proof of loss form and help you complete it. The total amount of your losses must be a specific dollar amount. The NFIP generally will not accept a proof of loss that states that your total loss is “undetermined.” Just as with a standard home insurance claim, your flood adjuster will take the condition your property was in before the loss into account and apply depreciation. Depreciation is negotiable and should not over- or undervalue your property.

You and the insurance company should reach an agreement on the extent of damage and cost of necessary repairs. If you cannot agree, you can appeal the insurance company’s decision.

For more information on flood claims and appeals, call the NFIP help center at (800) 427-4661 or go to www.floodsmart.gov. [You can also seek help from](http://www.floodsmart.gov) the Office of the Flood Insurance Advocate at <https://www.fema.gov/webform/flood-insurance-advocate-ask-question>.

You can find FEMA’s flood insurance manual at <https://www.fema.gov/media-library/assets/documents/178743> (effective April 1, 2019). For more detailed information on navigating a flood claim and reaching a fair settlement visit the nonprofit United Policyholders website www.uphelp.org and enter the word “flood” in the search box.

9.3 COVID-19 Related Flood and Auto Insurance Considerations

Financial hardships caused by COVID-19 are making it hard for many people to stay current on paying bills, including insurance premiums. If your flood insurance policy is about to expire and needs to be renewed and you have a premium payment due (or overdue) to keep it in force, you now have 120 days instead of the usual 30 days to pay and renew your flood insurance. NOTE: This special grace period extension only applies to flood policies with an expiration date between February 13 and June 15, 2020. To avoid a lapse in coverage, you must renew your NFIP flood policy within 120 days of its expiration date. For more information on renewing flood insurance or resolving an underpayment, contact the NFIP Call Center at 1-877-336-2627 or the insurance company identified on your flood policy paperwork.

Auto Insurance Discounts, Credits, and Benefits Plans: Contact your car insurance company if you’re having trouble making your premium payments due to COVID-19. Many of them have agreed to do the following:

- Offering premium credits or refunds for months you stayed off the road
- Waiving late fees
- Pausing collection actions
- Extending policy periods
- Not cancelling due to nonpayment

Find out what your car insurance company is offering to help customers with the financial hardships of COVID-19.

9.4 FAQs—Auto

If your car was damaged in a disaster other than a flood and was in a garage, carport, or outside, it may be covered by your auto policy and NOT your homeowners policy. The claim must then be made to the appropriate insurance agency for your auto policy.

Q. 9-1 My car was flooded. How does the insurance company determine if my car should be totaled?

Whether your car will be totaled is determined on a case-by-case basis. Typically, when the cost of repair plus the salvage value equals or exceeds the actual cash value of the vehicle before the loss, it will be considered a total loss. A primary factor is the amount of water in your car. Generally, if water covered your dashboard or electrical components, the car will be totaled.

Q. 9-2 My car was totaled due to flood damage, and I have full coverage on it. The company is going to pay the Blue Book value, but I still owe substantially more than that. Doesn’t the company have to pay what I owe on the auto?

No. The insurance company is only obligated to pay the current market value of your vehicle. You can request that the adjuster explain to you how the value was derived to ensure that all of the vehicle’s equipment, features, upgrades, and recent work were considered in determining the value. To cover the

difference between the market value of your vehicle and what you actually owe, you would need an endorsement or separate policy, usually called a “GAP policy,” for Guaranteed Auto Protection.

Q. 9-3 What will happen to the vehicle’s title if my car is totaled?

If you own the vehicle outright, you will have to sign the title over to the insurance company. In exchange, they may give you a check for the market value of the vehicle, depending on the terms of your policy. If you still owe on a car loan, the insurance company will coordinate with you and your lender to have the title signed over to them. In most cases, the insurance company will establish contact with the lender and be advised of the amount owed on the loan. If the insurance company has determined that the market value of the vehicle is \$10,000 and the amount owed the lender is \$8,000, the insurance company will issue a check for \$8,000 to the lender to release the lien on the car. The insurance company will then issue a \$2,000 check to you to obtain your signature on the title. For specific information on how titles are processed, contact the DMV by phone at 1-888-368-4689 or online at <http://txdmv.gov/contact-us>.

Q. 9-4 If my car is damaged by flood, and my policy only provides liability coverage, is there anyone I can contact for help?

If your auto insurance policy only provides liability coverage, it will not pay for damage to your car due to a flood. If a federal disaster has been declared, you can contact FEMA (www.fema.gov; 1-800-621-3362) or the Red Cross (www.redcross.org; 1-800-733-2767) to assist with immediate needs. You may also apply with the Small Business Administration at <http://disasterloan.sba.gov/ela>.

Q. 9-5 The insurance company requested that I tow my flooded vehicle to a specific location for inspection. Am I responsible for the towing charges?

No. The insurance company should pay the towing expense by reimbursing you or paying the tow truck operator once the vehicle is delivered at the inspection site. You should not be responsible for the expense since you are assisting the insurance company in a prompt inspection of your vehicle, as well as protecting it from further damage.

Q. 9-6 The insurance company agreed to repair my vehicle. Can the company require the use of used parts?

In some cases, used parts and aftermarket parts may be permissible, depending on the age, condition, and mileage of the particular vehicle. Most Texas personal automobile policies require the insurance company to pay the lesser of the following: actual cash value of the property, the amount to repair or replace the property with other of like kind and quality, or the amount stated in the declarations page of the policy.

Q. 9-7 Since my car was flooded, I had to rent a vehicle. Does my auto policy cover the cost of renting a car?

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

Q. 9-8 Is my vehicle covered for flood damage?

Flood damage is covered if you carry “other than collision” coverage, also called comprehensive coverage, on your policy. This information can be found on your policy’s declarations page. If you do not have a copy of your policy, you can check with your agent or insurance company.

Q. 9-9 What if I do not agree with the settlement offered by the insurance company, particularly the market value amount for my totaled vehicle?

Ask the adjuster to explain how the settlement amount was derived. You may also provide examples of vehicles for sale in your area that are in the same pre-loss condition to support the market value. If you still disagree, the personal auto policy allows you to demand an appraisal of the loss. There is a specific provision in many policies for appraisal which lists the responsibilities of both parties.

Q. 9-10 My car was washed away in the flood. How do I find out where it is now?

Contact the unclaimed autos department of the area police department. Also, your vehicle may have been towed to a storage facility without your consent. If the vehicle was towed without your consent, and the storage facility wants to charge you a fee, you should contact the Texas Department of Motor Vehicles (TxDMV) at 888-368-4689.

Q. 9-11 I've received a check from the insurance company but am not satisfied with the amount. I plan to file a complaint to request additional funds be paid. Should I cash the check? If I cash the check, does it mean that I accept their decision and amount of payment?

You should not endorse a check before discussing your concerns with the company. Call the adjuster or company first before cashing the check. In addition, read both sides of the check carefully, as well as any accompanying documents. Some companies have a release from further liability disclaimer printed on the back of the check. This language sometimes states that your endorsement of the check releases the insurance company from further liability for any further damages. In some cases, particularly when dealing with damaged real property, the check may be a partial payment to initiate repairs. Additional funds may be released when you submit proof that repairs have been completed. **Please be sure that you understand what the check represents and how cashing it will affect you prior to taking any action regarding the check.** If you need more of an explanation or information, talk to your agent or insurance company.

Q. 9-12 How does replacement cost coverage work?

Replacement cost coverage replaces or repairs your damaged property with new material and/or items of like kind and quality.

Q. 9-13 Is replacement cost coverage available on all policy types?

Replacement cost coverage is not available under a typical auto policy. Some insurers provide new car replacement for a limited number of years if the auto is insured when new. You should check with your agent or company to see if they offer replacement cost coverage on all policy types.

Q. 9-14 If an insured vehicle is financed, how are claim checks issued? If issued to both the insured and lienholder, how does the insured collect?

The lienholder endorsement requires the insurance company to pay the insured (usually you or whoever bought the insurance) and the lienholder as their interest may appear on the title. A lienholder is a lender

that legally has an interest in your property until you fully pay it off, which is usually a bank, a finance company, or a private person. The insured and the lienholder may both be named on the check. In most cases, insurance claim payments for damage to property that is security for a loan will be made payable to you and the lienholder, and the checks would require signatures from both parties. The insured and the lienholder will have to agree on the release of funds.

Q. 9-15 What can the insured do if the check made payable to both the lienholder and insured is sent directly to the lienholder and cashed without the insured's knowledge or signature on the check?

If this occurs, your first step would be to contact the insurer and your lienholder to discuss the issue. You can also contact the Texas Department of Banking at 1-877-276-5554 or visit their website at <http://www.dob.texas.gov/>.

Q. 9-16 Does the insured have to agree to have the vehicle totaled if the insured will be "upside down" on the loan?

The policy will state how the loss will be paid. The insurance company decides whether to total a car. A car is typically totaled if it will cost more to repair the car than the car is worth. Insurance coverage for the difference between the actual cash value of a car and the outstanding loan amount can be covered by a GAP endorsement or a separate GAP policy. If there is no GAP policy or something like it and the car is totaled, then the company will pay only the actual cash value of the car. If the insured owes more money on the car, he or she will still be responsible for the balance.

Q. 9-17 What if my car is determined to be a total loss but I want to keep it?

If your car is a total loss but you want to keep it, you would need to negotiate a settlement with the insurance company in which you are able to retain the salvaged car. However, you would be responsible for the cost of repairs and would be subject to the laws regarding owner-retained salvage. For questions regarding owner-retained salvage, contact the Texas DMV at 888-368-3689 or www.txdmv.gov. Additionally, you may want to contact the lienholder to find out whether retaining the salvaged car would impact the lien.

Source: This question and answer subsection utilizes information provided by the Texas Department of Insurance, <http://www.helpinsure.com/home/condisasterfaq.html>.

9.5 FAQs—Mobile Homeowners

Q. 9-18 Are there different types of policies that provide coverage for mobile homes?

“Mobile” and “manufactured” homes are covered under a mobile home policy. Both mobile and manufactured homes are built in factories, shipped in one piece, and not often fixed to a foundation. A “mobile” home is defined as one built before 1976. One built after 1976 is technically called a “manufactured home.”

A “modular home” is one that is built in a factory, shipped in pieces, and built onto a fixed foundation. It is usually covered under a homeowner policy.

Sometimes mobile/manufactured homes can be covered under RV or camper insurance if they have a hitch, but this is rare.

Q. 9-19 *Wind caused my tree to fall on my mobile home and damaged my roof. Does my mobile homeowners policy cover the damages to my home and would the company pay to remove the tree from my property?*

If a covered type of loss, such as wind, causes a tree or tree limbs to damage the mobile/manufactured home, the insurance company should cover the roof damage and also should pay any reasonable amount to lift or cut the tree (or limbs) off of the damaged structure and put them on the ground. Once they are on the ground, they may or may not pay for the debris removal. Some companies may provide an option to increase coverage. You should contact your agent or company regarding debris removal coverage.

Q. 9-20 *Does my mobile homeowners policy provide additional living expenses?*

Most mobile homeowners policies provide some additional living expense reimbursement in the event the mobile home is damaged or destroyed from an event that is covered under the policy and the mobile home is thereby rendered uninhabitable. Some companies may provide an option to increase this coverage. It is important that you contact your agent and/or company regarding your additional living expense coverage.

Q. 9-21 *My mobile home was flooded. Will my mobile homeowners policy pay for my damage?*

Generally, floods are not covered. However, it is important to check your policy and/or contact your agent regarding flood coverage for your mobile home.

Source: This question and answer subsection utilizes information provided by the Texas Department of Insurance: <http://www.helpinsure.com/home/condisasterfaq.html>.

9.6 **FAQs—Homeowners**

Q. 9-22 *What's the difference between the types of homeowner's policies? How does a dwelling policy differ from a homeowner's policy?*

Homeowner's policies may either provide "all risk" or "named peril" coverage. "All risk" is used to describe policies that typically cover all causes of loss or "perils" unless specifically excluded in the policy. In order for there not to be coverage for the peril, the peril must be listed under the Exclusions portion of the policy. "Named peril" means the damage must be caused by a peril that is specifically named or listed in the policy. The homeowner's policy usually provides coverage for the dwelling, personal property, other structures, additional living expenses (ALE), medical payments, and personal liability. A dwelling policy usually provides coverage for the dwelling and/or personal property.

Q. 9-23 *Can I make repairs to my property immediately?*

All policies require you to mitigate damages, meaning you are required to stop further immediate damage as soon as possible without endangering your own safety. This means you must protect it from further weather damage or from thieves entering, for example. However, you should do this by making only temporary repairs. **You should not** make permanent repairs until an adjuster has inspected the damage. Your policy covers the cost of necessary temporary repairs, so save your receipts for materials and create time logs for labor. You should take lots of pictures of the damage, both close up and wide angle, before making any repairs or moving damaged property. This includes pictures of any standing water. You should then separate damaged property from undamaged property and begin making a home inventory list.

Q. 9-24 Does a homeowner's insurance policy provide Additional Living Expenses (ALE) coverage?

If you can't remain in your home because of a covered reason in your insurance policy, your homeowner's or renter's policy may pay for staying in a hotel, motel, or other temporary shelter if it is in your policy. The amount will be based on your policy provisions. Most flood insurance policies do not provide this. If the damage does force you to move, be sure to tell your insurer where you are and how to reach you by phone. Also, leave a note at your damaged residence telling the insurance adjuster how to find you.

ALE is usually payment only above what you would normally pay for such expenses, so if you are forced to leave your home and stay in a hotel, for example, and normally pay \$800 for your mortgage but had to pay \$1,200 for a hotel stay, ALE will only pay \$400.

Q. 9-25 My home was not flooded by rising water; however, the sewer line backed up and caused damage in my home. Is this covered under my homeowner's policy?

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

Q. 9-26 My house was flooded and I placed my furniture and household items in the front yard to dry out, but they were stolen. Will my homeowner's policy cover this loss?

It depends on your policy. Even though flood losses may not be covered, many policies contain an exception if theft or stealing happens after the flooding. Review your policy and contact your insurance company or agent regarding coverage.

Q. 9-27 My policy states that if a claim results from a weather-related catastrophe or a major natural disaster, each claim-handling deadline is extended for an additional fifteen days. Does this mean that I have coverage under my policy for damage caused by the flood?

This language does not alter or amend what is covered by the policy. It merely extends the claim processing time requirements of the Texas Insurance Code.

Q. 9-28 Under a homeowner's policy, who determines the cause of damage and who pays for an expert if one is needed?

Your insurance company is required to send out an adjuster, who is a person professionally trained to investigate and assess damage and evaluate the loss. If they believe they need a further expert, they will pay for one. However, if you dispute the estimated damage amount, you may have to hire your own expert or appraiser.

Q. 9-29 My house got water in it from the flood. I had damage to the roof, which is sagging, and rain water came in through the roof. I don't have flood insurance, but I do have homeowner's insurance. What, if anything, may be covered under my homeowner's policy?

The damage from wind forcing rain inside your home is different from flood damage and may still be covered by a policy that does not cover flood damage. Your homeowner's insurance policy may or may not cover this type of damage, depending on type of policy and the specific language in your policy.

Q. 9-30 I received a "reservation of rights." What does this mean?

A reservation of rights will generally include language that looks similar to this: "Please be advised that although we are still investigating your loss, we are doing so under an express Reservation of Rights."

When an insurance company includes that wording in a letter to a customer who has filed a claim, it's legalese for "we are not sure we owe you this money but we are adjusting your claim for the time being." They are reserving their right to reject part or all of your claim in the future, and may or may not expressly outline why. Most likely, their indecision relates to an exclusion in the policy that they believe may be grounds for rejecting your claim. Continue to cooperate and reply by asking them to explain what they mean and what specific language in the policy or facts support their reservation of rights.

Q. 9-31 My insurance carrier and I are not yet in agreement on the value of my claim. However, they have made an initial offer. Do I have to wait for a final agreement before I receive any payout?

If there is no dispute as to whether or not there is coverage for a portion of your claim, your insurance company should pay the "undisputed" amount. For instance, if you think your claim is worth \$200,000 and the insurance company has offered you \$150,000, you may request a check for the undisputed amount of \$150,000. Make sure that this is not a full and final settlement, and that it is clear that the negotiations remain ongoing.

Q. 9-32 I've received a check from the insurance company but am not satisfied with the amount. I plan to file a complaint to request additional funds be paid. Should I cash the check? If I cash the check, does it mean that I accept their decision and amount of payment?

You should not endorse/sign a check before discussing your concerns with the company. Call the adjuster or company first before cashing the check. In addition, read both sides of the check carefully, as well as any accompanying documents. Some companies have a release from further liability disclaimer printed on the back of the check. The disclaimer sometimes states that your endorsement of the check releases the insurance company from any further liability. In some cases, particularly when dealing with damaged real property, the check may be a partial payment to initiate repairs. Additional funds may be released when you submit proof that repairs have been completed. **Please be sure that you understand what the check represents and how cashing it will affect you prior to taking any action regarding the check.** If you need more of an explanation or information, talk to your agent or insurance company.

Q. 9-33 How does replacement cost coverage work on policy types such as flood, homeowner's, dwelling, and mobile home?

Replacement cost coverage replaces/repairs your damaged dwelling or personal property with new material and/or items of like kind and quality. In most cases, you should only be responsible for paying the deductible. A deductible is what you have to pay out of your pocket before the insurance company will pay. Some homeowner's and dwelling policies automatically include replacement cost coverage for the dwelling; others allow you to add it for additional money, and some may only provide actual cash value. Actual cash value (ACV) is what the item would cost you if you took the replacement cost minus

depreciation (loss in value over time for wear and tear). Companies may also offer replacement cost coverage for mobile home policies. Review your policy and check with your agent or company to see if your policy has replacement cost coverage.

Q. 9-34 I've received a check from my company for damages to my home. It is going to cost more to repair than the amount received. Did they pay me enough for damages?

If you have replacement cost coverage, your claim may be paid in two stages. Your first claim check may be for the actual cash value (ACV) of the damaged property. ACV is determined by taking the replacement cost for the covered loss and deducting for depreciation (loss in value due to aging of item). Once the damaged property is repaired or replaced, you may be entitled to receive the depreciation that was previously withheld in your first check, up to the replacement cost of the damaged property, and not to exceed the actual amount spent or the total amount of insurance on the dwelling.

Generally, to receive the difference between ACV and replacement cost, the policy contract requires that the repair or replacement be completed within a specific period of time, usually 180 to 365 days from the date of loss. Policies may also provide an option for the insured to extend that time frame if requested in writing as outlined in the actual policy. It is important to check your policy and/or contact your agent regarding the specific requirements of your policy. Replacement cost value (RCV) claims can usually be filed up to 520 days from the date of loss.

If you are not underinsured, you should only be responsible for paying your deductible in most cases. If you believe your company is not offering an amount sufficient to repair/replace your damaged property, minus your deductible, you may want to request appraisal in accordance with the provisions in the policy. Ask your company to explain the basis for its payment and clarify if additional funds are forthcoming. Please note that many policies have higher deductibles for hurricane damage.

Q. 9-35 Do checks from insurance companies have to be endorsed by both the insured and the mortgage company? Does the same procedure apply to mobile homes?

Usually, if the damage is more than \$10,000, the mortgage company must be named on the check. However, different contracts may require different amounts, so review your mortgage contract carefully. If the total damage amount is over the amount required in the mortgage contract, endorsements will be required from both the insured and the mortgage company. Usually, the funds are held in escrow and disbursed in installments as repairs are made and approved.

Q. 9-36 What recourse does the insured have if the check was issued directly to the mortgage company? How long can a mortgage company hold money before releasing any to the insured? Can the mortgage company disburse the money in small increments? Can they withhold disbursements?

Your insurance company cannot make a check for a claim payable only to the mortgage company. If they do, you should refuse to accept it and demand the check be reissued to you and your mortgage company.

The Texas Insurance Code provides that the mortgage company must, within ten days after they receive the insurance proceeds, tell you what their requirements are in order to have the funds released. Once you have provided sufficient evidence to show that you have met those requirements, the mortgage company has ten days to release the funds.

- If you have a concern about a private mortgage lender, you should contact the Federal Trade Commission (FTC) at 1-877-382-4357 or online at <http://www.ftc.gov/contact>.

- Additionally, you may want to contact the Office of Consumer Credit at 1-800-538-1579 or online at <http://occc.texas.gov/contact>.
- If the lender is a state-chartered savings and loan, or bank, contact the Texas Department of Savings and Mortgage Lending at 1-512-475-1350.
- If the lender is a federally chartered lender, contact the Office of the Comptroller of the Currency (OCC) Customer Assistance Group at 1-800-613-6743.
- In some instances, the Office of Housing and Urban Development (HUD) may be able to help and should be called at 1-800-225-5342.

Q. 9-37 Are plumbing problems/backed up toilets covered by any types of insurance, even after a flood?

Generally, if the plumbing or sewer backup is deemed to be from a flood, it is not covered, either under a sewer backup policy or a standard homeowner's, renter's, or business policy. If the water damage results from another reason, it may be covered under your policy and you should contact your insurance agent or company.

Q. 9-38 There is a power outage in my area and we have no utilities in our home. Will my policy pay for a hotel until power is restored?

Probably not. The policy will normally only provide additional living expense coverage if your home is damaged by a cause of loss covered in your policy and, as a result, the residence is unfit to live in. You must check the specific language in your insurance policy, or contact your company/agent.

Q. 9-39 I bought my house several years ago and last year my mortgage was bought by another mortgage company. My original company provided flood insurance, but now I find that the new mortgage company did not provide it. What can I do?

Mortgage companies are required by law to ensure that a property in a flood zone has flood insurance. The new mortgage company has a duty to send a notice to the insurance provider that it will no longer provide the flood insurance. The mortgage company should then provide notice to you (the borrower) that you need to provide flood insurance on your own. You have a time limit to do so, usually forty-five days. If you fail to purchase flood insurance, then the mortgage company may purchase flood insurance for you. This is called "force-placed insurance" and is usually more expensive with less coverage than you would purchase on your own. If you do not maintain the required flood insurance, you may not be covered for damages that occur from a flood and potentially may not be eligible for federal assistance benefits, such as FEMA, in the event of a disaster. For information regarding the statute, contact the FEMA representative at a Disaster Recovery Center (DRC) at <https://gateway.fema.gov/ESF6/DRCLocator> or the National Flood Insurance Program at <https://www.fema.gov/national-flood-insurance-program>.

- If you have a concern about a private mortgage lender, you should contact the Federal Trade Commission (FTC) at 877-382-4357. You may also visit its website at www.ftc.gov.
- If the lender is a state-chartered savings and loan, or bank, contact the Texas Savings and Loan Department at 512-475-1350.
- If the lender is a Federal Chartered Lender, contact the Office of Thrift Supervision at 972-277-9500.

- In some instances, the U.S. Department of Housing and Urban Development (HUD) can help. Call HUD at 800-225-5342.

Q. 9-40 Wind caused my tree to fall on my house, which caused damage to my roof. Does my homeowner's policy cover the damage to my house and pay for the removal of the tree from my property?

If your policy provides coverage for wind, and the wind causes a tree or tree limbs to damage the roof of the home, the insurance company should cover the roof damage and also should pay any reasonable amount to lift or cut the tree (or limbs) off of the damaged structure and put them on the ground. Once the tree or limbs are on the ground, they may or may not pay for the debris removal. Some companies limit debris coverage for removal to \$500 per tree and \$1,000 per loss. Contact your insurance company or agent regarding coverage.

Q. 9-41 My neighbor's tree fell down on my house and damaged my roof. Will my neighbor's homeowner's policy pay for the damage to my home and remove the tree?

Probably not. Your neighbor is not legally liable for an act of nature. However, if there was some sort of negligence involved, such as if the tree was dead, your neighbor may be responsible for the damage to your home. If your neighbor's policy does not pay for your damage, you can make a claim under your policy if the peril that caused the tree to fall is a covered peril in your policy. You should contact your agent and/or company regarding the damage. It might be easier if you make the claim under your policy with your insurance company without trying to go after your neighbor first. Your insurance company will go after your neighbor's insurance for subrogation.

Q. 9-42 Some trees blew down in my yard during a storm. Will my homeowner's insurance policy pay for the loss to and removal of the trees?

Probably not. If a tree or tree limbs land on the lawn and do not damage a structure, the insurance company is usually not required to pay to have them removed, cut up, or hauled off.

Q. 9-43 A windstorm blew my fence down. Will my homeowner's insurance cover loss of my fence?

If your policy provides coverage for wind, you may have coverage for the fence. You may get actual cash value (ACV) or replacement cost value (RCV) depending on your policy. Usually, coverage for wooden fences is generally limited to actual cash value, which is the replacement cost for the damaged property less depreciation. You should check your policy and/or contact your agent regarding coverage.

Q. 9-44 Who should I contact if I have damage to my home as a result of a windstorm and my windstorm insurance is provided through the Texas Windstorm Insurance Association (TWIA)? How do I file a claim?

If you have Texas Windstorm Insurance Association (TWIA) insurance, you have one year from the date your property was damaged to file a claim.

For questions on policy coverage, please contact your insurance agent or contact the TWIA at 1-800-788-8247 or via its website at www.twia.org. If you need to file a claim or an appeal, you may do so by going to <http://www.twia.org/claimscenter/#claims-center-section-2> and registering.

For questions regarding inspections of your property for certification to the Windstorm Building Code, please contact the Texas Department of Insurance Windstorm Inspection unit at 1-800-248-6032 or refer to the website at <https://www.tdi.texas.gov/wind/index.html>.

Q. 9-45 What coverage do I have for my house and personal property under my TWIA policy?

Generally, the TWIA Dwelling Policy provides coverage for direct physical loss to your dwelling, other structures such as detached garages, and personal property, including clothing. You should contact your agent and review your policy and any applicable endorsements for specific coverage.

Q. 9-46 What do I do if I want to dispute my TWIA claim?

TWIA can do one of three things with your claim: (1) accept it in full, (2) accept partial coverage, or (3) deny the claim in full.

If you want to dispute a claim that's been either partially or fully accepted, you must submit further information to TWIA regarding a further payment or request formal appraisal, which has a strict deadline of 60 days from the date you receive the claim letter.

If you want to dispute a claim that has been partially or fully denied, you have two years to file a lawsuit or you will be barred from filing one on that claim.

If you have questions about the dispute resolution process, call 800-788-8247, option 1, or email claims@twia.org. You can also contact the Texas Department of Insurance's Coastal Outreach and Assistance Team (COAST) for TWIA claims assistance at 1-855-35-COAST (1-855-352-6278) or ConsumerProtection@tdi.texas.gov.

Q. 9-47 During the storm, a tree fell on the roof of my home which allowed rain to enter from the opening made by the tree. I now see mold growing. Do I have coverage?

Most homeowner's policies will provide coverage for the property damaged by rain that entered through an opening caused as a direct result of wind. Generally, mold is excluded in the homeowner's policy; however, some policies will cover an ensuing mold loss caused by or resulting from covered water damage. Coverage for ensuing mold loss would probably include the reasonable and necessary costs to repair or replace your damaged property. However, most policies do not include any additional costs for remediation or testing of ensuing mold unless your policy specifically includes it.

Q. 9-48 During the storm, my home was flooded. Does my homeowner's policy cover mold damage from the flood water?

Typically, homeowner's policies do not cover damage caused by or resulting from flood, surface water, waves, tidal water or tidal waves, overflow or streams or other bodies of water, or spray from any of these whether or not driven by wind. If there is no flood coverage provided in the homeowner's policy, any mold loss resulting from flood would not be covered under the policy.

Q. 9-49 Do I have to hire a public insurance adjuster to file and help in the settlement of my auto or homeowner's insurance claim?

No. Hiring a public insurance adjuster to assist you in filing a property insurance claim is optional and strictly your decision. Public insurance adjusters charge fees to help negotiate claim settlements with

insurance companies. Be aware that the public insurance adjuster fee is normally a percentage of the claim settlement and therefore is paid out of settlement monies received from an insurer.

Q. 9-50 Are there any limitations on the compensation of a public insurance adjuster?

Yes, the following limitations apply:

- If a claim is settled within seventy-two hours of the date the loss is reported to the insurance company, the public insurance adjuster is entitled only to reasonable compensation for time and expenses and cannot receive a commission consisting of a percentage of the total amount paid by the insurer.
- The public insurance adjuster's fee may not exceed 10 percent of a claim settlement. A clear statement of the public insurance adjuster's commission must be disclosed in the public insurance adjuster's written contract. Always review the contract language. If the public insurance adjuster is not licensed, the public insurance adjuster is not allowed to take a fee.

Q. 9-51 Is a public insurance adjuster permitted to be involved in the repair of damaged property for which the public adjuster negotiated settlement?

No. The public insurance adjuster may not participate, either directly or indirectly, in the reconstruction or repair of damaged property that is the subject of a claim adjusted by the public insurance adjuster.

Q. 9-52 Are public insurance adjusters required to be licensed by the Texas Department of Insurance?

Yes, a person may not act as a public insurance adjuster in Texas or hold himself or herself out to be a public insurance adjuster in Texas, unless the person holds a license or certificate issued by the commissioner. You may verify the license status of a public insurance adjuster at <http://www.tdi.texas.gov/agent/index.html>.

Q. 9-53 The food in my refrigerator spoiled because of loss of power in my area. Will my homeowner's policy pay for the loss?

If the power failure results from a peril covered in the policy and is off your premises, most homeowner's policies will cover up to \$500 for spoiled refrigerated or frozen food. If the power failure is caused by a covered peril and occurs directly to your home or equipment (refrigerator/freezer), you may be eligible for more than \$500. However, you need to read your policy to determine your coverage.

Q. 9-54 If I evacuate due to a storm, and my personal property is damaged or stolen while in another location, will my personal property be covered by my auto or homeowner's policy?

Homeowner's policies provide coverage for personal property while away from the insured location or premises. Most policies limit the amount of this coverage to either 10 percent or 20 percent of the total amount of coverage for personal property. Some policies limit theft coverage for personal property while away from the residence unless the insured is temporarily living there. Generally, a personal automobile policy will not cover personal property.

Source: This question and answer subsection utilizes information provided by the Texas Department of Insurance: <http://www.helpinsure.com/home/condisasterfaq.html>.

Q. 9-55 What if I have a mortgage on my property? Does the insurance company have to put my mortgage company on the check? How do I get my money for repairs?

When you borrowed money to buy your home, your mortgage company became invested in it. If you don't use insurance money to make repairs, the property is worth less, so the mortgage company wants to make sure the insurance money is used to protect its investment. Usually, if the damage to the property is more than \$10,000, the mortgage company will be named on the check. If you are only receiving insurance benefits for personal property or additional living expenses, the check will be made out only to you. If the check is made out to you and the mortgage company, you will be asked to sign it and send it to the mortgage company. How it is released for repairs depends on the language in your mortgage contract. In most cases, the funds are held in escrow and released in installments as the repairs are made and approved by the insurance company.

Q. 9-56 Can the mortgage company make me apply the insurance money to what I owe on the property?

Under most circumstances, mortgage companies will prohibit you from applying insurance funds to your principal or any payments on which you may be behind because they want you to make the repairs or rebuild the property. However, you must read your contract, because there are some circumstances in which if you are in default, the insurance proceeds may be applied to what you owe, but they must ask your permission.

Q. 9-57 What if my mortgage has been sold and the wrong company is on the check?

Return the check to the insurance company and ask that it be reissued and provide them with proof of the correct mortgage company.

Q. 9-58 What if I have paid off my mortgage?

Return the check to the insurance company and ask that it be reissued and provide them with proof that you have satisfied all your payments and that your loan is paid in full.

Q. 9-59 What if my mortgage company bought insurance for my property?

This is called "force-placed" insurance. This happens when a property owner allows his/her own insurance to be cancelled, lapse, or if he/she has been notified by the mortgage company that the insurance is insufficient. The mortgage company then buys the insurance for the homeowner. Usually it covers only the dwelling—no personal property—and can be homeowner's or flooding. If you have this kind of insurance and need to make an insurance claim, be aware that you must make the claim; the mortgage company will not do it on your behalf. If you are unsure if you have this kind of insurance, ask your mortgage company and get a copy of the policy. These policies are only to make repairs on the property; you cannot use them to pay off your mortgage.

For more information on insurance questions or to make an insurance-related complaint, call the TDI Consumer Help Line at 1-800-252-3439.

9.7 FAQs—Renters

Q. 9-60 What if I rent? Does my renters insurance cover damages from a disaster?

It would depend on the policy. Most renters policies provide coverage for lost, damaged, or stolen personal property/contents only. They may provide coverage for someone else that might get injured in the apartment, which is called liability coverage. However, flood is not covered unless you buy a separate policy.

These are the two types of personal property coverage – replacement cost value (“RCV”) and actual cash value (“ACV”). If you have RCV coverage, your insurance company owes to reimburse you for the full cost of replacing what you lost. If you have ACV, your insurance company will pay only replacement cost less depreciation, or what a willing buyer would have paid you immediately before the loss. ACV policies are more commonly written for renters insurance than homeowners insurance. We strongly recommend choosing replacement cost coverage if you can afford it. Check your insurance policy to see what type of personal property coverage you have.

Additional living expenses (ALE) may be available if specifically named in your policy. If you have ALE and you are forced to live elsewhere because your apartment has become uninhabitable due to the disaster, your insurance company will pay you what is incurred over and above your normal expenses. This means, for example, if you have to live in a hotel and eat out for a month and you spend \$2,000, where you would normally only spend \$1,400 on rent and groceries, your insurance company would pay you the additional \$600 to make up the difference. You must, however, keep your receipts and furnish those to your insurance company.

To find out your coverage, read your policy or talk to your agent. For more information on renters insurance, check out United Policyholders’ “What’s UP with Renters Insurance” here: <https://www.uphelp.org/pubs/whats-renters-insurance>.

9.8 FAQs—National Flood Insurance Program (NFIP)

Q. 9-61 What is the difference between a flood insurance policy issued by the NFIP and a policy issued by an insurance company? Does one provide better coverage than the other?

Flood insurance is provided by the federal government through the NFIP. The policies that are sold by insurance companies are usually NFIP policies sold through the “Write Your Own” (WYO) program. This is done to make it easier to purchase flood policies through local insurance agents. Even though the policies are purchased through the insurance companies, they are still basic NFIP policies.

Claims are handled by NFIP adjusters and by insurance company adjusters that are certified by the NFIP to handle flood claims. Questions and complaints can be referred to the NFIP at 1-888-225-5356. Some insurance companies may also offer additional flood coverage other than the NFIP policy or at a cheaper rate. You should check with your agent or company to see what coverage is available and best for your needs.

Q. 9-62 How can I obtain insurance coverage to protect my home and contents from damage caused by flooding?

NFIP makes flood insurance available to people who live in communities that participate in the National Flood Insurance Program. Contact your agent or the NFIP at 1-800-427-4661 to purchase a NFIP policy. The home need not be near a body of water or in a floodplain to qualify.

Q. 9-63 Why would I buy flood insurance if my property is in a low or moderate risk area?

Twenty to twenty-five percent of all flood insurance claims come from low to moderate risk areas.

Q. 9-64 Can I buy flood insurance if I rent?

You can buy up to \$100,000 of flood insurance for your contents.

Q. 9-65 How much flood insurance can I buy?

From NFIP, you can buy up to \$250,000 for the dwelling and \$100,000 for your contents. You may be able to add additional coverage through an agent who sells WYO policies.

Q. 9-66 Does the policy provide any coverage for additional living expense?

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

Q. 9-67 How is damaged residential property valued after a loss under an NFIP policy?

If the property is insured to at least 80 percent of its value and is your principal residence, the dwelling will be valued at replacement cost if the dwelling is replaced. If the dwelling is rebuilt at a new location, the replacement cost won't exceed what it would have cost to replace at the former location.

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

Q. 9-68 Is there coverage for the cost of debris removal? What about loss avoidance measures?

The cost of removing debris on your property, and the cost of removing debris of your property that is on someone else's property is covered, but it's subject to the limit of the policy. You will be compensated at the federal minimum wage if you perform the work yourself. Loss avoidance is limited to \$1,000 for the cost of sandbags, temporary levees, pumps, and plastic sheeting and lumber, including the value of your work. An additional \$1,000 is available for the cost of moving insured property to protect it from flood. These benefits do not increase the limit of insurance.

Q. 9-69 If my automobile was parked on my property and damaged by flood, does the flood policy cover the damage?

No, automobiles are not covered property under the NFIP policy. If you have comprehensive or full coverage under your auto policy, flood should be covered by that policy. If you have liability only, there is no coverage for the auto. If this happens, you should file a separate claim with your auto insurance agent or company.

Q. 9-70 Does flood insurance cover damage to built-in appliances?

Check to see what flood insurance coverage you have. Then, call the NFIP at 1-800-427-4661 to determine what would be covered in a flood insurance policy. Generally, flood policies provide coverage for the structure and personal property. Built-in appliances may fall under either category.

Q. 9-71 What coverage is available for commercial buildings?

Up to \$500,000 is available for non-residential buildings, and an additional \$500,000 for contents of non-residential buildings. Buildings and contents are valued at actual cash value.

Q. 9-72 When does coverage become effective under an NFIP policy?

There is a thirty-day waiting period before coverage goes into effect after an NFIP policy is purchased. However, there is an exception to the thirty-day waiting period when a new policy is initially purchased in connection with a loan. In that case, the policy becomes effective at the time of the loan closing.

Q. 9-73 What if my dwelling or commercial building is valued over the maximum limits available?

The insurance company that insures your commercial building for fire might add excess flood coverage. That coverage usually has the NFIP maximum limits as a deductible. Availability might depend on the flood zone of each location. There may be insurers that will write excess policies for dwellings over the \$250,000 maximum limits. You should contact your agent to learn more about available coverage.

Q. 9-74 Where can I get more information about flood insurance?

Check out www.floodsmart.gov.

Source: This question and answer subsection utilizes information provided by the Texas Department of Insurance: <http://www.helpinsure.com/home/condisasterfaq.html>.

Q. 9-75 What if I can't pay to renew my NFIP flood insurance policy due to COVID-19?

Most NFIP flood insurance policies contain a 30-day grace period beyond the expiration date, which will let you renew without losing your coverage. However, if your renewal is due between February 13 and June 15, 2020, FEMA has extended the grace period to renew to 120 days beyond your policy's expiration date.

Q. 9-76 What if I can't pay my car insurance premiums due to COVID-19?

Many major insurance companies have modified their auto insurance policies to help policyholders maintain their premium payments and avoid losing coverage due to COVID-19. To learn more about the options available to you, you should contact your insurance agent or company as quickly as possible and ask about any COVID-19 related programs they have rolled out.

10.0 HEALTH-CARE ISSUES

10.1 Overview

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

As a lawyer, you must differentiate between questions that raise genuine legal issues and those that require you to direct someone to an appropriate agency physician or another health-care provider. For example, in the wake of Katrina, some legal hotlines reportedly received calls for advice on how to diagnose “Katrina Cough” and give first aid techniques. These are not questions you should answer.

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

10.2 Most Common Issues/Questions

- I lost my job as a result of the disaster. What will happen to my health insurance?
- What if my employer drops health insurance coverage altogether?
- When I go to the doctor’s office, I am usually asked to sign a “HIPAA” form. What is HIPAA?
- Can I request that my personal health information not be disclosed to anyone?
- What personal information of mine is covered by HIPAA?
- How can I find out if my PHI has been wrongfully used or disclosed?
- I lost my job, but my spouse is still employed. I used to be covered under my employer’s plan. Can I switch to my spouse’s plan?
- I lost all of my health insurance papers, and I need to file a claim. What should I do?
- How can I get my prescriptions filled?

10.3 Summary of the Law

Organization and financing of health care in the United States

In the United States, the delivery of health care involves a complicated network of providers, including first responders (such as emergency medical technicians and paramedics), health-care practitioners, hospitals, out-patient clinics, ambulatory care centers, and emergency treatment centers. In many cities, including Houston, health-care providers enter into contractual relationships known as “integrated delivery systems.” An integrated delivery system is an organization or group of related organizations in which hospitals and physicians pool their activities to deliver comprehensive health-care services to

individuals. Such systems generally tie together a hospital or hospital system, professional practice groups of physicians and other providers, management systems, rehabilitation programs, and, in most instances, an insurance provider or health maintenance organization (HMO).

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

Some health-care financing arrangements still rely in part on a "fee-for-services" payment system, which is a system of health insurance payment in which a doctor or other health-care provider is paid a fee for each particular service rendered, but most methods of insuring or financing health care involve some degree of managed care. Managed care combines the delivery and financing of health care in order to create economies of scale. In a managed care system, a combination of contractual obligations and incentives is used to align the expectations of patients, providers, and payors with the goal of reducing the cost of health care delivery while maintaining a level of health care access that satisfies the patients' needs. HMOs, preferred provider organizations (PPOs), and integrated delivery systems are examples of the managed care strategy at work.

Provider/Patient Relationships

While health care providers are not subject to a common-law "duty to treat," such an obligatory duty may arise due to contractual obligations, statutory requirements, or a de facto relationship established by the parties' conduct. Lawyers should not assume that the "no duty to treat" principle is applicable in all cases.

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

It is also important to note that hospitals and health-care systems owe certain duties to patients that are independent of any obligations that derive from the physician/patient relationship. These responsibilities typically include the duty to (1) select, supervise, and retain medical staff; (2) use reasonable care in the maintenance of facilities and equipment; (3) oversee all persons who practice medicine within the facilities; and (4) formulate, adopt, and enforce adequate rules and policies to ensure quality care for patients.

10.4 Useful Websites

- For information concerning disaster assistance services being offered in surrounding states, visit the Texas Department of State Health Services' website:
<https://www.dshs.state.tx.us/commprep/welcome.aspx>
<https://www.dshs.state.tx.us/commprep/disasterepi/casper.aspx>
- For COVID-19-specific information from the Texas Department of State Health Services, including minimum standard health protocols for individuals, businesses, and employers; types of testing and public testing sites; and Executive Orders related to opening the state:
<https://www.dshs.state.tx.us/coronavirus/>

- For Health and Human Services guidance and bulletins regarding HIPAA privacy law during the COVID-19 Public Health Emergency:
<https://www.hhs.gov/hipaa/for-professionals/special-topics/hipaa-covid19/index.html>

- Specific DSHS announcements are located as follows:

DSHS Issues Health-Related Precautions and Reminds Public of Carbon Monoxide Dangers

<https://www.dshs.texas.gov/news/releases/20150527.aspx?terms=carbon%20monoxide>

(DSHS issued health-related precautions specific to Disaster Ike, but the release contains generally helpful information.)

- Other helpful websites:

Texas Health and Human Services Commission

Finding Help in Texas

<https://www.211texas.org/>

<https://hhs.texas.gov/about-hhs/find-us>

Temporary Assistance for needy families (TANF)

<http://yourtexasbenefits.hhsc.texas.gov/programs/tanf/>

Medicaid Texas

<http://yourtexasbenefits.hhsc.texas.gov/programs/health/>

Texas Department of Insurance

<https://www.tdi.texas.gov/consumer/storms/recoverytips.html>

Harris County Health Department

<http://www.hcpheh.org/>

Red Cross

<http://www.redcross.org/>

10.5 FAQs—COBRA Health Insurance Continuation

Q. 10-1 I lost my job as a result of the disaster. What will happen to my health insurance?

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

COBRA or the “Consolidated Omnibus Budget Reconciliation Act” is a federal law that may let employees and some retired employees keep their employer group health plan coverage between eighteen and thirty-six months if—

1. the employment ends (unless the employee is fired for gross misconduct) or
2. the person loses coverage as a dependent of the covered employee, or

3. the death of the covered employee

This is called continuation coverage. This coverage applies to employer-sponsored dental and vision plans, as well.

Generally, COBRA only applies to employers with twenty or more employees and to state and local governments. It does not apply to plans sponsored by the federal government and some church-related organizations.

Texas requires insurers covering employers with two or more employees to keep coverage for up to six months after COBRA ends if the coverage was through an insurance company or HMO subject to Texas insurance laws and rules. If the employee was fired, he may not be eligible. Additionally, the employee must have been covered for at least three consecutive months immediately before the end of his employment.

The cost of COBRA is more expensive than what the employee is used to paying, because it can include the portion of the premium that the employer had been paying. However, the cost may not be more than 102 percent of the total premium amount.

If you lose your job, the employer must tell the plan administrator of your right to COBRA within thirty days. The plan administrator then has fourteen days to notify you of your ability to accept or reject the coverage. You then have sixty days to tell the plan administrator if you accept or reject the coverage, and payment for the first period of coverage must be made in full within forty-five days.

You should call your employer's benefits administrator for questions about your specific COBRA options. If you have questions about Medicare and COBRA, you should call the Benefits Coordination & Recovery Center (BCRC) at 1-855-798-2627 (TTY: 1-855-797-2627). If your group health plan coverage was from a private employer, contact the Department of Labor at 866-487-2365, 817-861-2150, or 866-487-9243. If your group health plan coverage was from a state or local government employer, call the Centers for Medicare & Medicaid Services (CMS) at 1-800-633-4227, extension 61565. You may also contact the Texas Department of Insurance regarding continuation of benefits in Texas at 1-800-252-3439. If your coverage was with a federal government employer, visit the Office of Personnel Management at www.opm.gov.

Q. 10-2 What if my employer drops health insurance coverage altogether?

If your employer goes out of business or otherwise cancels its group health plan coverage, neither federal COBRA nor state continuation will be available to you or your family members. However, you and your family members may be able to obtain individual insurance policies. You should contact an insurance broker to purchase such a policy. If you do not know of one, you can contact the Texas Department of Insurance at 800-252-3439 to find a broker in your area.

Previously, if you were turned down for coverage from two separate insurers due to a pre-existing health condition, you may still have been able to obtain major medical insurance coverage from the Texas Health Insurance Risk Pool (www.txhealthpool.com), commonly referred to as the Risk Pool. However, as a result of the Affordable Care Act, the Risk Pool no longer exists.

Whether your employer must offer you health insurance depends on the size of your employer. Under the Affordable Care Act, if your employer has fifty or more full-time employees, it is required to provide health insurance to employees or pay a penalty. If your employer is a small business, it does not have to pay a penalty if it does not provide health insurance.

The ACA counts you as full-time if you average more than thirty hours per week at your job. If your average hours are less than thirty hours per week, the law does not require your employer to provide insurance. The company is free to cancel any coverage it does provide. If you are a full-time worker, it can cut your hours until you no longer qualify for full-time and, therefore, insurance. The Employee Retirement Income Security Act (ERISA) requires your employer to notify you about any major changes to your insurance plan. You must also be notified about your ability to continue coverage under COBRA or the Texas law. If your employer cancels your group health-care coverage but continues to employ you, you may be able to convert to individual coverage for six to nine months until you can find a better insurance deal or a job with better health insurance benefits.

For insurance questions or for help with an insurance-related complaint, call the Texas Department of Insurance (TDI) Consumer Help Line at 1-800-252-3439.

In addition, some low-income individuals may qualify for Medicaid programs in Texas. Medicaid provides health-care coverage for some low-income individuals, families and children, pregnant women, the elderly, and people with disabilities. Medicaid in Texas is dependent on various factors (including an individual's income and family size), so one's eligibility for Medicaid will be determined on a case-by-case basis. If you have lost your employer-provided insurance and qualify as a low-income individual or household in Texas, you and/or your children may qualify for Medicaid. To apply, call 2-1-1, go online to <https://yourtexasbenefits.hhsc.texas.gov/apply/how-to-apply>, or visit your nearest Texas Health and Human Services Commission (TxHHSC) office.

10.6 FAQs—HIPAA, Privacy, and Special Enrollment Rights

Q. 10-3 When I go to the doctor's office, I am usually asked to sign a "HIPAA" form. What is HIPAA?

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) established fairly strict privacy and disclosure requirements for health-care providers and health-care plans. The Privacy Rule protects all individually identifiable health information—information relating to an individual's past, present, or future physical or mental health or condition; the provision of health care to the individual; or the past, present, or future payment for the provision of health care to the individual—from being disclosed without that individual's permission. A HIPAA authorization form is a document that allows an appointed person or party to share specific health information with another person or group.

Q. 10-4 Can I request that my personal health information not be disclosed to anyone?

Under HIPAA, a Request for Confidential Communications is a request that your health information or identity be disclosed only to you because you believe that if it were revealed to others, your life and/or health would be in immediate danger. This request must be reasonable and may not adversely impact your care. You must immediately notify your health-care provider and/or health plan and tell them how and where you wish to be contacted. They may deny your request if it presents a threat to public health or safety.

A Request for Restriction is different than a Request for Confidential Communication. A Request for Restriction is your right to ask that a restriction or limitation be placed on what medical information will be used or disclosed about you. It can be made for any reason. Your health-care provider or health plan do not have to agree to the request, but if it is reasonable, they will usually honor it.

Make any special privacy requests in writing and keep a signed copy if the provider or health plan agrees to follow it.

However, there are certain exceptions to such requirements in the event of a disaster. The [U.S. Department of Health and Human Services](https://www.hhs.gov/hipaa/for-professionals/faq/960/can-health-care-information-be-shared-in-a-severe-disaster/index.html) provides a summary of what patient information can be shared in order to assist in disaster relief efforts at <https://www.hhs.gov/hipaa/for-professionals/faq/960/can-health-care-information-be-shared-in-a-severe-disaster/index.html>.

Here is a brief look at the issue:

- **TREATMENT.** During a disaster, health-care providers as well as your health plan can share patient information without patient authorization as reasonably necessary to provide treatment, refer patients for treatment in area where patients have relocated, coordinate care, and arrange for payment. You may request reasonable restrictions on the use of your data, even for these purposes.
- **NOTIFICATION.** Health-care providers and health plans can share patient information as necessary to identify, locate, and notify family members, guardians, or anyone else responsible for the individual's care, of the individual's location, general condition, or death without patient permission if the patient is incapacitated or not available. A health-care provider may also share patient information with disaster relief organizations such as the American Red Cross without the patient's permission if obtaining the patient's permission would interfere with the organization's ability to respond to the emergency. In addition, entities such as the American Red Cross are not covered by the Privacy Rule and therefore are not restricted from sharing patient information.
- **IMMINENT DANGER.** Health-care providers and health plans can share patient information with anyone as reasonably necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public consistent with applicable law and standards of ethical conduct.

Q. 10-5 What personal information of mine is covered by HIPAA?

HIPAA applies to individually identifiable health information used by health-care providers and health plans in their treatment, payment, and health-care-operation functions. Under HIPAA, this information is known as "Protected Health Information" or "PHI." Note, PHI does not include information used or disclosed by your employer for employment-related reasons, nor by health care providers when they are performing employment-related functions (such as drug testing and fitness for work).

Q. 10-6 How can I find out if my PHI has been wrongfully used or disclosed?

If you believe that your private medical information has been exposed or wrongfully shared, you should contact the person or entity responsible for the disclosure and ask them to retrieve the disclosed records, and request that whoever received them destroy their copies. The responsible party will probably be willing to help you if an error did occur. If you are not sure, you have the right to request a prompt accounting of all disclosures that may have been made in error by a health-care provider or health plan in the prior six years. You also have a right to review and receive a copy of all PHI in the possession of your health-care providers and health plans. They are allowed to charge a "reasonable, cost-based fee." They can charge for supplies, staff time for copying and processing, and mailing (if applicable). However, they may not charge for the time a staff member spends searching for the record.

You should then contact the United States Department of Health and Human Services Office for Civil Rights (HHS) to describe the alleged incident and request an investigation. If any HIPAA violations are found, the agency may warn or discipline the person responsible for the disclosure, or refer the matter to the Department of Justice for prosecution.

You may contact HHS for assistance by calling 1-877-696-6775 or visiting the Health Information Privacy Filing a Complaint webpage: <https://www.hhs.gov/hipaa/filing-a-complaint/complaint-process/index.html>.

To file a complaint, either fill out a “Health Information Privacy Complaint” (PDF) form at <https://www.hhs.gov/sites/default/files/ocr-60-day-frn-hip-complaint-form-508r-11302022.pdf>, or file your complaint online by visiting the OCR online portal at <https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf>. Filing a complaint online will allow for faster processing as OCR personnel on site is limited.

Q. 10-7 I lost my job, but my spouse is still employed. I used to be covered under my employer’s plan. Can I switch to my spouse’s plan?

Under certain circumstances, you may qualify to switch to your spouse’s health insurance during a special enrollment period. Special enrollment periods are triggered by certain life events, including marriage, the birth or adoption of a child, or when the spouse is no longer eligible for coverage under their own company’s health insurance plan, which typically occurs when there is a job loss. This can also occur when a spouse loses Medicaid or CHIP eligibility.

If you qualify, you’ll probably have to show proof of the change in circumstances before the company will let you enroll. Usually you have to enroll within a certain time frame, which is normally sixty days, in order to qualify.

This question and answer subsection uses information provided by the U.S. Department of Labor at <https://www.dol.gov/general/topic/health-plans/newborns>.
<https://marketplace.cms.gov/outreach-and-education/special-enrollment-periods-available-to-consumers.pdf>

10.7 FAQs—Health Insurance Claims

Q. 10-8 I lost all of my health insurance papers and I need to file a claim. What should I do?

If you have to file your health insurance claim yourself, you will need to contact your insurance company to obtain a health insurance claim form, or you may be able to download a copy from their website. Your claim form will also give you additional instructions about what other information you will need from your doctor or health-care facility. Usually, claims will be submitted by your medical provider’s office to the insurance company.

If you are able to use a computer, many insurance companies now offer the ability to log onto your health and medical benefits plan online. You can ask your insurer to find out if they have online access. Many times, they will also have someone who will walk you through how to set it up if you do not know how.

You may then be able to file your claim online or at least be able to start your claim. If you have to mail it or any supporting documents, be sure to make copies of everything before you mail them.

When you access your plan online or contact your insurer, be sure to ask how long it will take to process your claim.

You should make sure that you are aware of that date so that you can watch for your claims award or file an appeal of the claim if you receive a denial notice.

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

Claims are denied for various reasons. Perhaps the services you received are not covered by your plan. Or, perhaps the plan simply needs more information about your claim from you or your medical providers. You should check with your plan to make sure of your appeal deadline. Some private insurers allow up to 180 days to file an appeal of a claim, but others, such as managed-care plans, only allow a very short timeframe.

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

On appeal, your claim must be reviewed by someone new who must look at all of the information submitted and consult with qualified medical professionals if a medical judgment is involved. This reviewer cannot be a subordinate of the person who made the initial decision and must not give any consideration to the prior decision.

In addition, plans have specific periods of time within which to review your appeal, depending on the type of claim. Be sure to check with your insurance plan to find out what the deadlines are.

Source: This question and answer subsection uses information provided by the U.S. Department of Labor at:

<https://www.dol.gov/agencies/ebsa/key-topics/health-and-other-employee-benefits/claiming-benefits>.

Q. 10-9 I'm enrolled in Medicare Part C (Medicare Advantage), but I can't access any of my usual providers. What do I do?

If you need medical attention and cannot access your regular provider during a disaster or emergency, if you are enrolled in original Medicare, call 1-800-MEDICARE (1-800-633-4227) to get more information about where to see a doctor.

If you have a Medicare Advantage or other Medicare health plan, call them at 1-800-MEDICARE or check their Internet website (<https://www.medicare.gov/find-a-plan/questions/home.aspx>) to find out any temporary changes to rules and timelines. You will also be told if you are allowed to see doctors or go to hospitals outside of your provider network during an emergency.

Your plan may also be able to apply the in-network rate to services you receive out-of-network during this period. Save your receipts in case you need to provide it and ask for a refund.

10.8 FAQs—Prescriptions

Q. 10-10 How can I get my prescriptions filled?

For information on how to get your prescriptions filled, contact the Texas Department of State Health Services at (512) 776-2150, 1-888-963-7111, or 1-800-735-2989. To find an open pharmacy, go to RxOpen.org, which maps open and closed pharmacies during disasters. The site also has locations of American Red Cross shelters and infusion centers in the affected communities.

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

1. a written prescription from a licensed health care provider;
2. a prescription phoned or faxed in from a licensed health care provider to a licensed pharmacy in Texas;
3. a current prescription bottle indicating a remaining refill; or
4. other proof of an existing prescription.

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

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

During a disaster, individuals with prescription questions regarding EPAP eligibility, covered drugs and durable medical equipment, and claim submission may call 1-855-793-7470. This number is only active during a declared disaster in which EPAP has been activated. The EPAP-covered prescriptions can be filled at almost any pharmacy in Texas. The pharmacy is responsible for verifying eligibility for the EPAP program.

Eligibility for the Emergency Prescription Assistance Program: The person applying—

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

Q. 10-11 I'm enrolled in a Medicare Part D Prescription Drug Plan. How can Medicare help me with my prescriptions?

If you had to leave your home without your medicine, or your medicine was damaged or lost due to the disaster or emergency, try to refill it at your usual network pharmacy. Pharmacies are expected to suspend

“refill too soon” restrictions to allow enrollees to get necessary medications. If you are unable to go to your local pharmacy, contact your Medicare Advantage or Part D plan at 1-800-MEDICARE (1-800-633-4227) and they can help you find another nearby network pharmacy to get your medication.

If you are unable to get your prescription at an in-network pharmacy, your plan can help you get it at an out-of-network pharmacy, but you may pay more out-of-pocket. If you paid full cost, you may be able to get a refund. You will just need to keep your receipts and ask your plan where to submit those along with a paper claim form.

You might also ask your plan if you can get an extended day supply in case you are unable to return home for a while.

Additionally, pharmacies are also permitted to waive co-pays if they determine a person cannot pay; however, that is a decision that is up to the pharmacy.

For more information, see: https://www.cms.gov/Medicare/Prescription-Drug-Coverage/PrescriptionDrugCovContra/Downloads/MemoPDBManualChapter5_093011.pdf. Other helpful links can found at <https://www.cms.gov/>.

10.9 Medicaid

If you are on Medicaid and had to leave home and need a new main doctor, call your health plan for assistance in finding another doctor. If you don't have your health plan's number, call 1-800-252-8263.

If you are on Medicaid or CHIP and live in a county declared a federal disaster, you may be able to see out-of-network providers for emergency and nonemergency services until the disaster declaration ends. Medicaid clients and legally authorized representatives can access Medicaid health records at yourtexasbenefits.com.

If you are moving to Texas from another state due to a natural disaster, you may be able to transfer your Medicaid or CHIP eligibility to Texas.

Sometimes in a disaster, your co-pay and enrollment fee for CHIP may be waived if you live in a county declared a federal disaster. If you are unsure of your benefits, call 1-800-252-8263 to check.

If you have an appeal pending or have a hearing scheduled and have questions about your fair hearing, you should call the Fair and Fraud Hearings Section at 1-800-TX-AUDIT. If you miss your hearing, you may be able to claim that you had “good cause” for missing the hearing and ask that your case be reopened and hearing be rescheduled.

If you have a claim pending with the Medicaid Estate Recovery Program and were affected, you might be able to get deadlines extended for responses and materials needed. You should call 1-877-787-8999 for more information.

D-SNAP and WIC

If you enrolled in D-SNAP and you are pregnant or have a child younger than five, you will also be eligible for WIC, which allows you to get fruit and vegetables, cereal, bread, and milk, as well as infant formula. If you need more information, you should visit TexasWIC.org or call 800-942-3678 for more information.

If you lost your Lone Star Card in the disaster and need a new one, you should call 1-800-777-7328 (toll-free) for a replacement. You may also be able to buy replacement food you may have lost in the disaster. You will need to file a Form H1855, Affidavit for Nonreceipt or Destroyed Food Stamp Benefits, with your nearest Texas Health and Human Services Office.

Q. 10-12 What if I need extra food stamp assistance?

The Disaster Supplemental Nutrition Assistance Program (D-SNAP) offers short-term food assistance benefits to families recovering from a disaster.

To be eligible, you must—

1. be from a county that has been declared a federal disaster area;
2. have experienced a loss of income, destruction of your home or a disaster-related expense, such as temporary shelter or home repairs;
3. not have been getting regular SNAP food benefits at the time of the disaster; and
4. meet certain income limits.

D-SNAP benefits are issued through the Lone Star card that can be used at most grocery stores. To apply, you should watch for bulletins regarding how and when to apply for D-SNAP, call 877-541-7905 or call 2-1-1 and after picking a language, choose option 2, or visit yourtexasbenefits.com. See <https://hhs.texas.gov/services/financial/disaster-assistance> for more info.

- If you forgot or your medication or lost it during the evacuation, you can get it replaced, if your pharmacist approves.
- If you are on dialysis and need help finding a provider, call 866.407.ESRD for help.
- Pregnant women, women and girls ages 10 to 55, and men and boys 14 and older can get one bottle of mosquito repellent per month from a participating pharmacy if they are in the following programs:
 - Medicaid
 - Children's Health Insurance Program
 - CHIP-Perinatal
 - Healthy Texas Women
 - Children with Special Health Care Needs Services Program
 - Family Planning Program

<https://hhs.texas.gov/about-hhs/communications-events/news/2017/08/hhs-works-approval-emergency-benefits>.

Q. 10-13 What happens if I get Medicaid, SNAP, TANF, or SNAP and because of the disaster, I had to change my address or move-in with family?

If you receive any of the above, you must report any change in your address, household makeup, including number of people, or income, to Texas Health and Human Services within ten days of the change. You can report changes online at YourTexasBenefits.com or by going to the nearest Texas Health and Human Services Offices and completing Form H1019 or by calling 2-1-1 or 1-877-541-7905. Make sure when you report the change you keep a log of the date you reported the change, how you reported it and if you spoke with someone, the name of whom you spoke with.

Q. 10-14 How can I get help with funeral assistance if someone I loved died in the disaster?

You should first check and see if he or she had a private life insurance policy. If so, you should file a claim with the life insurance policy and provide the appropriate documentation.

You may also submit a signed statement to FEMA from a licensed medical official that the cause of death was caused by the disaster. You must then also submit estimates of the funeral costs and other funeral assistance, which can be verified by FEMA, and confirmation that the expenses have not been paid for by other resources, such as Social Security or a Veterans Affairs pension.

If you qualify, certain funeral costs may be paid by FEMA through the Other Needs Assistance (ONA) provision of the Individuals' and Households Program (IHP). Costs may include price of a casket, burial plot, monument and/or interment or cremation fees.

If the person who died was a veteran, you may call the Veteran's Administration at 1-800-827-1000 to find out what other benefits might be available.

11.0 PERSONAL BANKRUPTCY ISSUES

11.1 Overview

The damages and dislocation caused by a disaster are expected to make some storm victims think about filing bankruptcy. Below is a summary of certain applicable sections of the Bankruptcy Code and answers to common questions asked about bankruptcy. This outline is meant to only be a bankruptcy primer.

The current Bankruptcy Code was enacted in 1978 and has been amended a number of times since then. The most significant amendments to the Bankruptcy Code were implemented in 2005 by the Bankruptcy Abuse Prevention and Consumer Protection Act (the “BAPCPA”). The outline below is intended to highlight certain relevant provisions of the Bankruptcy Code and some of BAPCPA’s changes to it; however, it is advisable for any storm victim considering bankruptcy to consult a qualified bankruptcy attorney. To the extent that state law is relevant, the emphasis is on Texas law.

11.2 Most Common Issues/Questions

- The bankruptcy process and decision to file
- Prerequisites or other requirements for filing
- The federal district for filing
- Types of debts discharged in bankruptcy
- Types of property exempt in bankruptcy
- How marriage, divorce, and child support affect bankruptcy
- The automatic stay

11.3 Summary of the Law

There are four different chapters of the Bankruptcy Code affecting individuals: Chapter 7, Chapter 11, Chapter 12, and Chapter 13. Of these, Chapters 7 and 13 are generally most relevant to individuals.

Chapter 7

A Chapter 7 case is sometimes called “liquidation.” In any individual bankruptcy case, certain types of property are exempt from creditors and are kept by the debtor. In a Chapter 7 case, all of the debtor’s assets for which the debtor does not, or cannot, claim an exemption are subject to being liquidated by the Chapter 7 trustee, with the net proceeds distributed in order to pay creditors’ claims. Still, in most individual filings, due to the exemptions, the debtor will keep most or all of his or her property, and once the case is completed, most (and sometimes all) of the debtor’s debts that existed prior to filing the petition (see the first paragraph of the answer to [Q. 11-1](#) below) are “discharged” (legally eliminated).

As explained below, eligibility for Chapter 7 is subject to a “means test,” which requires debtors making an income above certain levels to instead file a Chapter 13 case. This section of these materials contemplates debtors who file voluntary bankruptcy petitions. However, Chapter 7 cases may also be involuntarily

instituted by a debtor's creditors. There are no limits on the amount of debt that an individual may have and still file a Chapter 7.

Chapter 13

A Chapter 13 case is sometimes called "reorganization." In Chapter 13, a debtor who has regular income is required to follow a "plan" that obligates the debtor to pay some or all of his or her debts over a 3-5 year period. Chapter 13 is available only to an individual with regular income whose unsecured debts are less than \$ 419,275 and whose secured debts (e.g., mortgage or auto loan) are less than \$ 1,257,850. [11 U.S.C. § 109](#). (Under [11 U.S.C. § 104](#), the foregoing dollar figures are adjusted periodically; the figures provided throughout this section will be current until April 1, 2022.) A Chapter 13 case must be voluntary.

As noted above, debtors with income above a certain threshold (but below the debt thresholds listed in the previous paragraph) cannot file Chapter 7 cases and instead must file under Chapter 13. This requirement was implemented as part of the BAPCPA; the rationale was a belief among many of the BAPCPA's supporters that too many debtors who could afford to repay some or all of their debts were abusing Chapter 7.

Even though a Chapter 13 case requires a repayment plan that lasts several years, Chapter 13 does offer certain benefits compared with Chapter 7. For example, some homeowners who would lose their home in a Chapter 7 case might be able to keep it in a Chapter 13 case. (With respect to Chapter 7 filings and home ownership, the "homestead" exemption is discussed in the answer to [Q. 11-19](#) below.) In addition, when the debtor is facing foreclosure of a mortgage, a mortgage lender generally cannot foreclose on a home during the automatic stay that goes into effect after the filing of a petition (the automatic stay is discussed below), and in a Chapter 13 case, missed payments can be cured over the term of the plan, thereby reinstating the mortgage.

Under both Chapters 7 and 13, certain debts cannot be discharged (these include alimony and child support, student loans under most circumstances, or debts relating to death or injury due to the debtor's drunk driving), but Chapter 13 contains a "super discharge" that allows for discharge of some debts, upon completion of the plan, that would not be dischargeable in a Chapter 7 case (explained below). The Chapter 13 super discharge was much more extensive prior to 2005, when it was narrowed substantially by the BAPCPA, but it still covers certain debts that cannot be discharged under Chapter 7. Chapter 13 also allows the debtor to retain possession of his or her property, even non-exempt property, while making payments under a repayment plan. However, Chapter 13 requires that creditors be paid at least as much as they would receive under Chapter 7, which means that the amount repaid under the plan must equal or exceed the value of the retained non-exempt property.

Chapter 11

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

Chapter 12

Chapter 12 is for "family farmers" and "family fishermen." The Code defines this to be someone who earned more than 50% of their gross income from farming or fishing during the year immediately preceding

the year of filing for bankruptcy. 11 U.S.C. § 101(18)(A), (19A). There are special provisions for Chapter 12 debtors, and this will include filing a plan as well and devoting income in the future to pay creditors.

Benefits & Concerns with Filing

In general, a major benefit of bankruptcy is that an automatic stay is implemented which prevents further collection actions by creditors once the bankruptcy case is filed. 11 U.S.C. § 362. However, the BAPCPA added several new exceptions to the automatic stay. In addition, the BAPCPA imposed several new requirements on debtors, including (1) increased filing and disclosure requirements, (2) a requirement to complete credit counseling before filing for bankruptcy, and (3) a requirement to complete a personal financial management course before receiving a discharge of debts.

Filing bankruptcy will be reported on credit reports and may affect future credit applications. In addition, a bankruptcy filing could affect a debtor's eligibility to benefit from the protections of certain provisions under the Bankruptcy Code in the event of a future filing. Therefore, it is important to evaluate how this may affect an individual before proceeding.

Finally, a note about the dollar figures in this section. Every three years, on April 1st, certain dollar amounts in the Bankruptcy Code (such as figures used in the means test) are adjusted. 11 U.S.C. § 104(a). Therefore, if you are looking at the Bankruptcy Code in a printed source or even online, be careful to note that the dollar figures you see might not be up to date, even if the source otherwise contains the current law. This section reflects current dollar figures as of April 1, 2019, and will be valid until April 1, 2022. <https://www.federalregister.gov/documents/2019/02/12/2019-01903/revision-of-certain-dollar-amounts-in-the-bankruptcy-code-prescribed-under-section-104a-of-the-code>.

11.4 Relevant Courts/Agencies

Bankruptcy law is federal law, and the bankruptcy courts follow the same district (and division, if applicable) boundaries of the U.S. district courts. You can find the proper federal district for your client's case at: <https://www.uscourts.gov/federal-court-finder/search>.

Consult the website of the U.S. bankruptcy court for your particular federal district for updates and information.

Southern District of Texas: <https://www.txs.uscourts.gov/page/bankruptcy-court>.

Northern District of Texas: <https://www.txnb.uscourts.gov/>.

Western District of Texas: <https://www.txwb.uscourts.gov/>.

Eastern District of Texas: <http://www.txeb.uscourts.gov/>.

There are a number of forms that debtors must file as part of the bankruptcy process. The forms can be found at <http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx>.

A particularly useful link can be found at <http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics.aspx>, which provides a good summary of the bankruptcy process under the BAPCPA.

Again, although debtors have this information available to them, if at all possible, they should not file bankruptcy without an attorney. Bankruptcy is highly specialized, filled with traps and pitfalls for attorneys, let alone a pro se debtor. It may be difficult for a debtor to fix any mistakes he or she makes when filing for bankruptcy pro se, and it may be harder for an attorney to correct those mistakes if the case is dismissed.

11.5 FAQs

Q. 11-1 What is involved in the bankruptcy process?

A bankruptcy case begins with the filing of a petition. The debtor's petition must ultimately be supported by schedules (forms in which the debtor lists all property, secured claims, unsecured claims, income, expenses, claimed exemptions, and other information), and a statement of financial affairs (which provides personal background information). In a Chapter 7 case, the debtor must also file a statement of intention with respect to any secured property indicating which such property he or she will surrender, reaffirm, or redeem. If the Chapter 7 debtor fails to carry out ("perform") the statement of intention within the appropriate time, the automatic stay (explained below) may be lifted with respect to this property. [11 U.S.C. §§ 521\(a\)\(2\), 362\(h\)](#).

The BAPCPA imposed a number of new filing requirements on debtors. Debtors must file copies of all payments received from an employer within 60 days before filing, an itemized statement of monthly net income, a statement disclosing anticipated increases in income or expenditures within the next 12 months, evidence of attendance from a credit counseling agency (discussed below), and a "record" of any interest in an education IRA or tuition savings program. [11 U.S.C. § 521\(a\)–\(c\)](#). The debtor must also file a certificate proving that the debtor received certain required notices. [11 U.S.C. § 521\(a\)](#). The BAPCPA also requires the debtor to provide certain tax returns to the trustee and any creditor that requests copies. [11 U.S.C. § 521\(e\), \(f\)](#). Failure to comply with filing requirements will likely result in dismissal. [11 U.S.C. § 521\(i\)](#).

In a Chapter 7 (liquidation) case, the court will appoint a trustee to represent the interests of the creditors. About a month after filing, the debtor must attend the "Section 341 meeting" of creditors conducted by the trustee to answer questions under oath regarding the debtor's assets and schedules. Creditors are invited, though in routine bankruptcy cases they do not usually appear and ask questions. The Section 341 meeting is usually pretty quick, although a debtor's lack of compliance with requirements, incomplete information, or responses to questions may result in the hearing lasting longer than usual or being continued. After the Section 341 meeting, the trustee will often file a "no-asset report," informing the debtor(s) and creditors that the trustee will not liquidate ("administer") any assets, and that the debtor(s) can keep all their property. Sometimes, the trustee will file a report announcing that he or she does intend to gather and attempt to sell certain nonexempt property. The debtor can sometimes purchase the nonexempt property from the trustee. The trustee may also file lawsuits to recover funds of the bankruptcy estate that are considered to be "preferences" and/or fraudulent transfers or to pursue other claims that a debtor may have. ("Preference" is a term referring to a debtor's payment or transfer of assets to a creditor shortly before the bankruptcy.) The proceeds from all sales and lawsuits are eventually distributed to the creditors once all such property is administered. As a general matter, the debtor will receive a discharge of creditor claims a few months after the Section 341 meeting. If the trustee filed a no-asset report, the case will be closed very soon after the discharge order is entered. If the trustee filed a report indicating that he or she plans to liquidate some nonexempt asset(s), the case will remain open until all assets are administered and the proceeds distributed.

In all consumer bankruptcy cases, the debtor must attend a credit counseling class before filing the case and a financial management class before a discharge will be granted. [11 U.S.C. § 109\(h\)\(1\), 727\(a\)11 & 1328\(g\)](#). These classes are usually conducted online or by phone and must be done by an approved provider. See this website for a list:

<https://www.justice.gov/ust/list-credit-counseling-agencies-approved-pursuant-11-usc-111>.

The federal government does have the authority to waive this counseling requirement for a district if it determines that "the approved nonprofit budget and credit counseling agencies for such district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling." [11 U.S.C. § 109\(h\)\(2\)\(A\)](#). The Justice Department exercised this authority in Louisiana and

in the Southern District of Mississippi after Hurricane Katrina, but there is no guarantee that any such waiver authority will be exercised in the future.

A Chapter 13 (wage earner) case begins by filing similar papers as under a Chapter 7. Unlike Chapter 7, where all assets that are not exempt are subject to being sold by a trustee, in Chapter 13 the debtor will file a repayment plan. The debtor makes payments under this plan from future income each month directly to the Chapter 13 trustee, who is an administrator for the benefit of the creditors. It is extremely important that you check your local rules for any special procedures regarding mortgage payments. Once the plan is approved (“confirmed”) by the court, the trustee pays creditors according to the terms of the plan. The plan typically has between a three- to five-year term (but the term may not exceed five years). The plan may provide for cure of a home mortgage, property taxes, automobile loan arrearages, and in certain instances might permit a write down of the debt to the value of the automobile as well as a reduction in interest rate, if the vehicle has been owned long enough by the debtor. The plan may also strip off a wholly unsecured second lien on a debtor’s homestead. When the debtor has repaid creditors according to the plan, the debtor will be discharged of all dischargeable debts (some debts are non-dischargeable, see [Q. 11-5](#) below), even if the plan did not pay them in full. The percentage paid to unsecured creditors will be dependent on the disposable income a debtor has, the amount of nonexempt property, and an amount calculated by the means test. The amount of personal expenses will be potentially subject to adjustment by the court if excessive, in order to permit disposable income to be allocated to creditors under the plan. The requirements for the plan can be found at [11 U.S.C. § 1321 et seq.](#)

Q. 11-2 Should I file for bankruptcy?

Filing bankruptcy is a strictly personal decision. The ratio of a debtor’s assets to liabilities is an important factor. The type of debt a debtor has is another factor. A debtor cannot discharge all debts. So, it is very important to determine before any filing whether certain types of your debts may be “nondischargeable” in a bankruptcy proceeding (see [Q. 11-5](#) below). The effect bankruptcy might have on your credit rating, ability to borrow in the future, or reputation may be important. The impact bankruptcy might have on prior transfers of money or property may be a factor. The need to cure mortgage debt arrearages might be important. The desire to retain nonexempt property in the future might also be a factor. The decision as to whether and when to file a bankruptcy petition should be based upon the facts of each debtor’s individual case.

Q. 11-3 Are there any pre-requisites to filing for bankruptcy?

Before an individual debtor can file a bankruptcy petition, he or she (or if filing as spouses, both) must complete an approved credit counseling course within 180 days before filing. [11 U.S.C. § 109\(h\)\(1\)](#). Such a course must outline opportunities for credit counseling and provide budget analysis assistance. These courses can be taken online. The debtor must file a certificate of compliance. [11 U.S.C. § 521\(b\)\(1\)](#). However, the law provides for a **temporary** waiver (thirty days) of this requirement if a debtor can show “exigent circumstances” and that he or she requested credit counseling but was unable to receive it within seven days of the request. [11 U.S.C. § 109\(h\)\(3\)\(A\)\(i\), \(ii\)](#). This is rarely allowed. Case law has consistently held that a pending foreclosure IS NOT an exigent circumstance. The law also provides an exemption if such services are not available in the area where the debtor resides or if the debtor is incapacitated, disabled, or on active military duty. [11 U.S.C. § 109\(h\)\(2\), \(4\)](#). This would only be applicable in very rare circumstances, particularly given the access to online courses. As mentioned above, the Justice Department temporarily exercised authority to suspend the counseling requirement in Louisiana and in the Southern District of Mississippi after Hurricane Katrina, but there is no guarantee that any such waiver authority will be exercised in the future.

Q. 11-4 How does the “means test” work?

The BAPCPA introduced a new “means test” for Chapter 7 bankruptcies. [11 U.S.C. § 707\(b\)\(2\)\(A\)](#). The purpose of the test is to prevent abuse of Chapter 7. If a debtor has primarily consumer debt (as opposed to business debt) and does not meet the “means test,” a presumption of abuse arises and a Chapter 7 case may be dismissed or converted to a Chapter 13 case. Debtors must file Official Bankruptcy Form B 122A-2, which contains the “means test” calculation. The form is available at <http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx>.

The formula for the means test is quite complex, but in short, it works as follows:

First, the debtor’s “current monthly income” must be determined. “Current monthly income” is defined as the average of the last six months income received by the debtor, excluding benefits received under the Social Security Act, payments to victims of war crimes, and payments to victims of international or domestic terrorism. [11 U.S.C. § 101\(10A\)](#). The debtor’s “current monthly income” (on an annualized basis—i.e., multiplied by twelve) must then be compared to the “median family income” for his state. The median incomes for each state can be found at <http://www.justice.gov/ust/eo/bapcpa/meanstesting.htm>. As of May 1, 2020, median incomes for Texas based on household size are: \$50,902 (one person); \$66,899 (two people); \$73,948 (three people); \$86,259 (four people) ; https://www.justice.gov/ust/eo/bapcpa/20200501/bci_data/median_income_table.htm. If the debtor’s current monthly income is lower than the state median, no presumption of abuse arises, and the debtor is allowed to file a Chapter 7 case. [11 U.S.C. § 707\(b\)](#).

If, however, the debtor’s current monthly income exceeds the state median, the “means test” applies and the debtor must calculate certain expense amounts based on IRS standards in order to determine if the debtor is eligible for a Chapter 7 bankruptcy. These allowed expenses are deducted from the current monthly income and then multiplied by sixty (in other words, the total amount over five years) to arrive at “disposable income.” If disposable income is greater than (1) 25 percent of the debtor’s nonpriority unsecured debt or \$8,175, whichever is greater, or (2) \$13,650, a presumption of abuse arises. [11 U.S.C. § 707\(b\)\(2\)\(A\)](#). (Nonpriority unsecured claims include obligations such as credit card and medical-related debts.) Unless this presumption is rebutted, the case may be dismissed or converted to a Chapter 13 case.

It is worth noting that the concept of “current monthly income” also impacts certain calculations for Chapter 13 repayment plans. [11 U.S.C. § 1325\(b\)](#). For debtors whose annualized “current monthly income” is less than the applicable state median but who nevertheless file a Chapter 13 bankruptcy, the repayment plan must be no longer than three years (unless there is court approval for a period of up to five years). [11 U.S.C. § 1322\(d\)\(2\)](#). If the debtor’s “current monthly income” is equal to or greater than the applicable state median, the plan generally must be for no longer than five years. [11 U.S.C. § 1322\(d\)\(1\)](#).

As discussed above, median incomes and expense deductions used to calculate the “means test” (as well as other dollar amounts under the Bankruptcy Code) are adjusted periodically. [11 U.S.C. § 104\(a\)](#).

Q. 11-5 Which debts are not discharged in bankruptcy?

Certain debts are not dischargeable in bankruptcy, meaning bankruptcy does not affect them. Chapter 13 historically allowed for the discharge of more debts than Chapter 7, but the BAPCPA largely eliminated the scope of what debts can be discharged only under Chapter 13.

In a Chapter 7, 11, 12, or 13 case, you cannot as a general matter obtain a discharge for, among other things: (1) domestic support obligations, including alimony, child support, and certain property settlements, (2) student loans, absent extreme hardship (if you are going to pursue this option, make sure you do extensive case review; in the Fifth Circuit, which covers Texas, this standard is virtually impossible to meet), (3)

damages resulting from driving under the influence, (4) court-ordered restitution or a criminal fine included in the sentence for conviction of a crime, (5) taxes that are generally less than three years old or, if older, arising under late or fraudulent tax returns, (6) damages for willful and malicious injury awarded for personal injury or death of another person, (7) debts incurred by fraud, (8) damages for willful and malicious injury to someone else's person or property, (9) certain taxes and tax penalties, or debts incurred to pay non-dischargeable taxes, (10) debts that were or could have been listed in a prior case in which you waived or were denied a discharge, (11) property settlements in a divorce, (12) condominium or cooperative housing fees and assessments (i.e., HOA dues), (13) court filing fees, or (14) damages resulting from securities fraud. [11 U.S.C. §§ 523, 1328](#). Note, however, that in Chapter 13 you can restructure the payments under the plan and provide some relief to immediate payment demands for these types of debts.

Notably, the BAPCPA also expanded the nondischargeability for “luxury goods or services” and cash advances. Consumer debts to a single creditor for luxury goods or services greater than \$725 incurred within ninety days before filing are presumed non-dischargeable. [11 U.S.C. § 523\(a\)\(2\)\(C\)\(i\)\(I\)](#). Likewise, cash advances greater than \$1,000 obtained within seventy days before filing are also presumed non-dischargeable. [11 U.S.C. § 523\(a\)\(2\)\(C\)\(i\)\(II\)](#). These dollar amounts are valid until April 1, 2022.

Q. 11-6 What happens if I leave out a debt on my petition?

Generally, if the debt is not listed on your schedules, then you may not get the benefit of the discharge and will have to repay that debt. [11 U.S.C. § 523\(a\)\(3\)](#). However, there is some case law to suggest that the debtor may still be able to get the discharge in a no-asset Chapter 7 case, absent any fraud or intent to hinder a creditor. But if you fail to list the debt with the intent to conceal and defraud, then you may lose your discharge in its entirety.

For more information about listing debts on a bankruptcy petition, visit <http://www.nolo.com/legal-encyclopedia/leave-creditor-off-bankruptcy-mailing-matrix.html> (note that this is a private, third-party resource and its content has not been reviewed for accuracy in preparing these materials).

Q. 11-7 Does a bankruptcy filing stop a wage attachment?

Yes. This is a result of the automatic stay that occurs when you file a bankruptcy petition. However, the stay only applies to debts incurred before you filed the bankruptcy petition. The automatic stay also does not apply to payments for child support or alimony.

Q. 11-8 What is a discharge in bankruptcy?

A “discharge” in bankruptcy means that the debtor is legally free and clear of any obligation to repay certain debts. The creditor no longer has any right to demand or collect that debt. The debtor no longer has any obligation to repay it. [11 U.S.C. § 727](#).

For more information on discharge in bankruptcy see <http://www.nolo.com/legal-encyclopedia/what-is-the-bankruptcy-discharge.html>. (note that this is a private, third-party resource and its content has not been reviewed for accuracy in preparing these materials).

Q. 11-9 How can I escape from my student loan debt?

Student loans are dischargeable only on a showing of “undue hardship.” [11 U.S.C. § 523\(a\)\(8\)](#). The undue hardship standard is very hard to meet. Unlike practically every other legal liability, student loans never go

away—there is currently no statute of limitations for student loan debt. In fact, the BAPCPA expanded the definition of student loans to encompass all types of lenders, including nongovernmental lenders. [11 U.S.C. § 523\(a\)\(8\)](#).

Q. 11-10 Can I repay a creditor if I want to, even after bankruptcy?

Voluntarily repaying a debt even if it would be (or already was) discharged by your bankruptcy is not prohibited (*see* 11 U.S.C. §524(f)), but you should be very careful if you consider pursuing this option. Once a discharge is obtained, the discharge will operate as an injunction against efforts to collect the discharged debt, and creditors cannot force a debtor to pay any amounts that are discharged. In a Chapter 7 case, if you choose to do this, you must use exempt assets (assets you listed on your schedules as being exempt) or post-petition earnings (money you earned after you filed the petition), so it may be wise to wait until the bankruptcy case is closed before making such voluntary payments. See <http://www.nolo.com/legal-encyclopedia/what-debts-must-i-continue-pay-during-my-chapter-7-bankruptcy.html> (note that this is a private, third-party resource and its content has not been reviewed for accuracy in preparing these materials).

Q. 11-11 What is the automatic stay?

The “automatic stay” prevents a creditor from continuing to enforce a claim against a debtor during the pendency of the bankruptcy case. Some examples of actions by a creditor that would violate the stay are these: (1) filing a new lawsuit or continuing to press a lawsuit that had already been filed, (2) sending collection letters, (3) filing a “financing statement” to perfect a security interest, (4) refusing to issue a transcript of school records, or (5) seeking to foreclose on property.

There are a number of exceptions to the automatic stay, however. The automatic stay does not apply to certain proceedings involving certain domestic matters (i.e., paternity, domestic violence, and dissolution of marriage matters), the withholding of income to pay domestic support obligations (i.e., child support, alimony), the restriction or suspension of a driver’s license, and certain pre-existing eviction actions. [11 U.S.C. § 362\(b\)](#). In addition, the stay now automatically terminates after thirty days if the case is filed by a debtor within one year after he or she had another bankruptcy case dismissed, unless the court finds that the new filing is in good faith. [11 U.S.C. § 362\(c\)\(3\)](#). If the debtor files a third bankruptcy within one year after two previous bankruptcy cases were dismissed, the automatic stay does not go into effect when the third case is filed, and the debtor must ask the court to impose a stay. [11 U.S.C. § 362\(c\)\(4\)](#). The automatic stay also automatically terminates with regard to secured debt if a statement of intention is not filed timely (within thirty days after the filing of the petition or by the date of the Section 341 meeting, whichever is earlier). [11 U.S.C. § 521\(a\)\(2\)](#).

Q. 11-12 I’m married. Can I file by myself?

Yes, but your spouse will still be liable for any joint debts, and all community property will be included in the debtor’s bankruptcy estate. If you file together, you will be able to double your exemptions. In some cases where only one spouse has debts, or one spouse has debts that are not dischargeable, then it might be advisable to have only one spouse file. If the spouses have joint debts, the fact that one spouse discharged the debt may show on the other spouse’s credit report.

For more information, refer to <http://www.nolo.com/legal-encyclopedia/filing-bankruptcy-without-spouse-property-debt.html> (note that this is a private, third-party resource and its content has not been reviewed for accuracy in preparing these materials).

Q. 11-13 Where do I file if I haven't lived in the same state or district for the last six months?

Under [28 U.S.C § 1408](#), the case should be filed where the debtor has lived “for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period.” See also [11 U.S.C. § 522\(b\)\(3\)\(A\)](#). This means that the case should be filed in the bankruptcy district in which the debtor has lived for the greatest portion of the last six months. Typically, your case will be handled within the district in the closest division, and the bankruptcy judges regularly conduct hearings at each of the divisions’ courts.

In order to receive certain state exemptions in the bankruptcy, such as a homestead exemption, the debtor must have lived in Texas longer (see [Q. 11-19](#) for more details).

Q. 11-14 How will my ex-spouse’s filing bankruptcy affect our divorce decree or settlement?

Alimony, maintenance, and/or support are protected from discharge. The exceptions to discharge broadly include “domestic support obligations” as well as property settlements not otherwise covered as “domestic support obligations,” including attorney’s fees. [11 U.S.C. § 523\(a\)\(5\)](#), (15). In addition, domestic support obligations are now given the first priority for payment of unsecured debt. [11 U.S.C. § 507\(a\)\(1\)\(A\)](#). And if the debtor is filing a Chapter 13 case, the debtor cannot receive confirmation of a repayment plan or discharge under Chapter 13 unless the debtor has paid all domestic support obligations coming due after the bankruptcy filing. [11 U.S.C. § 1325\(a\)\(8\)](#).

Q. 11-15 Will my retirement plan or IRA be protected?

Generally speaking yes, if the funds are in a qualified account. Retirement plans that are ERISA-qualified are protected under current laws in all jurisdictions and are not included as property of the bankruptcy estate.

However, the exempted assets in an individual retirement account (IRA), except for a simple employee pension or a simple retirement account, may not exceed \$1,362,800 in a case filed by a debtor who is an individual, except that such amount may be increased if the interest of justice so requires. [11 U.S.C. § 522\(n\)](#).

Q. 11-16 What effect does bankruptcy have on child support?

Filing bankruptcy does not allow your ex-spouse to discharge past due child support obligations. Any back payments owed for child support cannot be discharged in a bankruptcy proceeding. As noted above, the automatic stay no longer applies to proceedings to establish or modify domestic support obligations or to withholding of income for payment of domestic support. [11 U.S.C. § 523\(a\)\(5\)](#), (15).

Q. 11-17 What about co-signers on loans?

If someone has co-signed a loan with you and you file for bankruptcy, the co-signer may have to pay your debt. Chapter 13 extends the automatic stay to co-debtors for consumer debt in most cases pending confirmation of a plan. [11 U.S.C. § 1301](#). Nevertheless, if the co-signed debt is not fully repaid by a debtor, the co-signer is still liable for the balance.

Q. 11-18 Will my filing bankruptcy stop a foreclosure?

Yes and no. Filing bankruptcy temporarily stalls your lender’s right to foreclose (the automatic stay, discussed above), until it gets permission to go forward with the foreclosure proceedings. However, a

bankruptcy filing won't stop a foreclosure forever. Eventually, a debtor in bankruptcy will still have to provide "adequate protection" to a secured creditor by making payments on the debt (and/or satisfying certain other criteria), or the automatic stay can be lifted. See 11 U.S.C. §§ 361, 362. Moreover, in order to keep the secured asset, the debtor will have to become current on the mortgage in a Chapter 7 case or cure the arrears in a Chapter 13 case. Note that the Chapter 13 plan cannot modify the mortgage on a loan secured by the debtor's principal residence. 11 U.S.C. § 1322(b)(2).

Q. 11-19 What property is exempt from the trustee in a Chapter 7 case?

In a Chapter 7 filing, certain property is exempt from the debtor's estate, meaning that the trustee and the debtor's creditors cannot liquidate the property in order to recover on the debtor's assets. In Texas, a debtor can elect either federal or state property exemptions, 11 U.S.C. § 522(b), assuming the debtor can meet the residency provisions discussed below for relying on state law (see also Q. 11-13). The federal exemptions are listed at 11 U.S.C. § 522(d). However, because Texas generally has more generous homestead property exemptions than are provided under federal law, most debtors will elect to take state law exemptions.

In order to claim a state's exemptions, the debtor must have lived in the state for at least 730 days (two years). Otherwise, the debtor can only claim the exemptions of the state in which he or she resided for the largest portion of the 180-day period preceding the last two years. 11 U.S.C. § 522(b)(3)(A). This is intended to prevent a debtor from moving to the state to take advantage of its more generous homestead laws and then immediately filing bankruptcy.

Certain Southern and Western states, including Texas, historically have had generous exemptions for debtor's personal residences, known as the "homestead exemption." The BAPCPA imposes a \$170,350 cap on filers for any equity interest in a homestead purchased during the approximately forty months (1,215 days) prior to the bankruptcy filing. 11 U.S.C. § 522(p)(1). Clearly, this has a significant impact on residents who recently moved to Texas. There is no cap on the homestead exemption for property owned for more than 1,215 days. The cap also does not apply to equity rolled over from a prior residence located in the same state if the prior residence was acquired before the 1,215-day period. 11 U.S.C. § 522(p)(2).

The following exemptions are allowed under Texas state law (again, these are available to individuals who meets the residency requirements):

ASSET	EXEMPTION	PROVISION
Homestead	Urban: ten acres of land on one or more contiguous lots, along with improvements, used by a single adult or head of a family for purposes of a home or as both a home and a place of business. Rural: 200 acres for a family; 100 acres for a single adult. <u>Note:</u> A person cannot have both a rural and an urban homestead	Tex. Prop. Code § 41.002
Personal Property Exemption (overall)	Overall limit: Single Adult: \$50,000 Family: \$100,000	Tex. Prop. Code § 42.001

	<p>The following are specifically exempt, which means they are not included as part of the overall limit above:</p> <ul style="list-style-type: none"> (1) current wages for personal services, except for the enforcement of court-ordered child support payments; (2) professionally prescribed health aids of a debtor or a dependent of a debtor; (3) alimony, support, or separate maintenance received or to be received by the debtor for the support of the debtor or a dependent of the debtor; and (4) a religious Bible or other book containing sacred writings of a religion that is seized by a creditor other than a lessor of real property who is exercising the lessor's contractual or statutory right to seize personal property after a tenant breaches a lease agreement for or abandons the real property. 	
<p>Personal Property Exemption (specific items)</p>	<p>The overall exemption above may include the following (within the aggregate limits above):</p> <ul style="list-style-type: none"> (1) home furnishings, including family heirlooms; (2) provisions for consumption; (3) farming or ranching vehicles and implements; (4) tools, equipment, books, and apparatus, including boats and motor vehicles used in a trade or profession; (5) wearing apparel; (6) jewelry not to exceed 25 percent of the overall limits above; 	<p>Tex. Prop. Code § 42.002</p>

	<p>(7) two firearms;</p> <p>(8) athletic and sporting equipment, including bicycles;</p> <p>(9) a two-wheeled, three-wheeled or four-wheeled motor vehicle for each member of a family or single adult who holds a driver's license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the non-licensed person;</p> <p>(10) the following animals and forage on hand for their consumption:</p> <p style="padding-left: 40px;">(A) two horses, mules, or donkeys and a saddle, blanket, and bridle for each;</p> <p style="padding-left: 40px;">(B) twelve head of cattle;</p> <p style="padding-left: 40px;">(C) sixty head of other types of livestock; and</p> <p style="padding-left: 40px;">(D) 120 fowl; and</p> <p>(11) household pets.</p>	
Insurance	Any policy proceeds or cash values under an insurance policy issued by a life, health, or accident insurance company or an annuity plan used by an employer.	Tex. Ins. Code § 1108.051
Retirement Accounts	<p>Right to assets or payments, whether vested or not, in stock bonus, pension, annuity, IRAs, and other plans if qualified under Internal Revenue Code of 1986.</p> <p><u>Note:</u> IRA or annuity contributions, except to Roth IRAs, in excess of the amounts deductible for tax purposes are not exempt.</p>	Tex. Prop. Code § 42.0021

College Savings Plans	“a qualified tuition program of any state that meets the requirements of” IRS Code §529	Tex. Prop. Code § 42.0022¹
Worker’s Compensation	Worker’s compensation and death benefits.	Tex. Lab. Code § 408.201
Unemployment Benefits	Benefits received are exempt if not mingled; right to future benefits is exempt	Tex. Lab. Code § 207.075(b), (c)

Q. 11-20 What if I cannot afford to hire a lawyer to file a bankruptcy case?

Bankruptcy is a complex process and there are many legal and factual matters to consider in deciding whether a bankruptcy case should be filed. While a person can file an individual case pro se, the procedural rules and requirements and the substantive legal issues make any such case extremely hard to complete and to permit a discharge to be obtained. If you cannot afford to hire an attorney, you may be able to obtain assistance in certain circumstances, if you qualify, by contacting one of the entities listed below. For a convenient tool to find which legal aid provider serves your county or zip code, try: <https://www.lsc.gov/what-legal-aid/find-legal-aid>.

Houston area:

Houston Volunteer Lawyers
(Primarily Harris County)
1111 Bagby, Suite FLB300
Houston, TX 77002
(713) 228-0735
<https://www.makejusticehappen.org/>

Lone Star Legal Aid
(Houston and Greater Southeast Texas)
500 Jefferson Street, 17th Fl.
Houston, TX 77002
(713) 652-0077
<https://lonestarlegal.blog/>

Dallas/Forth Worth

Dallas Volunteer Attorney Program
1515 Main St.
Dallas, TX 75201
(214) 243-2236
<http://www.dallasvolunteerattorneyprogram.org>

Legal Aid of Northwest Texas
(Dallas and Greater Northwest Texas)
1515 Main St.
Dallas, TX 75201
(214) 748-1234
<https://internet.lanwt.org>

Austin/San Antonio

Texas RioGrande Legal Aid
(Austin/San Antonio and Greater West Texas)
1111 N. Main Ave.
San Antonio, TX 78212
(210) 212-3700
<http://www.trla.org/>

¹ This section of the property code appears to be repealed as part of the Acts 2019, Texas Acts of the 86th Leg.-Regular Session, ch. 320, Sec. 4.

The person should reference the “Bankruptcy Assistance” program when he/she calls.

Q. 11-21 What about obtaining payment from my company or someone I did business with before the disaster who is now out of business?

If you have a claim for payment you might contact a lawyer for assistance in collecting the debt or seek relief in a justice of the peace small claims court for debts less than \$10,000. If you decide to file a bankruptcy and have not collected on this payment, you will need to list this as an asset.

Q. 11-22 Virtually all my property and my apartment were destroyed in the disaster. Should I file bankruptcy?

If you only have property that is exempt from creditors then there would appear to be no immediate need as a general matter to file a bankruptcy case. As a general matter, exempt property cannot be taken from debtors except by creditors that have obtained a lien on the property when it was bought, or for unpaid taxes. However, the decision whether to file is something an individual debtor should evaluate, looking at all the facts and circumstances of his or her situation and future. If a creditor obtains a judgment against a debtor, the creditor may later garnish or get a turnover order for the debtor’s bank account.

Q. 11-23 My business was affected by the disaster. Can it file bankruptcy?

Businesses can file bankruptcy cases. Many businesses can file Chapter 7 and Chapter 11 cases but only individuals can file Chapter 13 cases. If your business is unincorporated and a “dba,” then any bankruptcy by the business will place you into bankruptcy as well. To avoid being personally liable for business debts for unincorporated businesses, many business owners file both a business bankruptcy and a personal bankruptcy, because the business bankruptcy does not protect the owners from personal liability for the business debts. These matters should be reviewed with an attorney.

12.0 REPLACING LOST DOCUMENTS

This outline provides information on how to go about replacing documents lost, destroyed, or damaged during a disaster.

12.1 U.S. Mail Service

Call 800-ASK-USPS (275-8777) for general assistance. If you suspect you have been targeted by mail fraud, identity theft involving the U.S. mail system, or theft or destruction of your mail, you can call 1-877-876-2455 or file a complaint online at <https://www.uspis.gov/report/>.

TDD/TTY Relay: Call 1-800-877-8339. Ask for 1-800-275-8777 for customer service or 1-877-876-2455 for mail-related crimes.

12.2 Bank and Investments Accounts

Many lost records or bankcards can be replaced by visiting your local bank branch. If your bank has been destroyed or no local branches are in operation, contact your bank's customer service department. Some customer service numbers for frequently used banks are listed below. If your bank is not listed below, the FDIC maintains a directory of contact information for FDIC-insured banks, available at <https://research2.fdic.gov/bankfind/>. To file a complaint against or your bank or for additional information, visit <http://www.fdic.gov>.

JP Morgan Chase	1 (800) 935-9935
Bank of America	1 (800) 432-1000
USAA Federal Savings Bank	1 (800) 531-8722
Comerica Bank	1 (800) 925-2160
Wells Fargo Bank	1 (800) 869-3557
BBVA Compass Bank	1 (844) 228-2872
Frost Bank	1 (800) 513-7678
Texas Capital Bank	1 (877) 839-2265
Prosperity Bank	1 (800) 531-1401
Capital One	1 (877) 383-4802
Citibank	1 (888) 248-4226

12.3 Benefits Programs - Lone Star Card, Food Stamps/SNAP, WIC, and TANF Benefits

The Supplemental Nutrition Assistance Program (SNAP), the Texas Assistance for Needy Families Program (TANF), and the Women, Infants, and Children Program (WIC) are administered in Texas by the Health and Human Services Commission through the Lone Star Card. If your Lone Star Card is lost or stolen, contact HHSC as soon as possible at 800-777-7328 so that your existing card will be canceled and your benefits will be preserved. If you would like to know more about the SNAP, TANF or WIC programs or if you are not currently enrolled but you need assistance due to an emergency situation, you can learn more about how to apply at <https://www.yourtexasbenefits.com/Learn/Home> or by calling 1-877-541-7905.

Information on Texas benefit programs affected by the COVID-19 pandemic can be found at <https://hhs.texas.gov/services/health/coronavirus-covid-19/coronavirus-covid-19-information-people-receiving-services>.

Additionally, the USDA can authorize the issuance of emergency SNAP benefits when there is a presidentially declared emergency or when grocery stores or other regular commercial food supply channels have been restored following a disaster. The D-SNAP (Disaster SNAP) system operates under a different set of eligibility and benefit delivery requirements than the regular SNAP. People who might not ordinarily qualify for SNAP benefits may be eligible under the disaster Supplemental Nutrition Assistance Program if they have had disaster damage to their homes, or expenses related to protecting their homes, or if they have lost income as a result of the disaster, or do not have access to bank accounts or other resources. For information on the emergency SNAP benefits in Texas, visit <https://hhs.texas.gov/services/financial/disaster-assistance/disaster-snap>.

12.4 Birth, Death, Marriage, and Divorce Records

For births that occurred in the State of Texas within the past 75 years and deaths that occurred in the State of Texas within the past 25 years, only the person themselves or the immediate family members (child, parent, sibling, grandparent, or spouse) of the person whose name is on the birth certificate or death certificate are eligible to request a copy. Those with any other relationship must provide legal documentation, such as a court order establishing guardianship. You can obtain birth or death certificates from the Vital Statistics Office at <https://txapps.texas.gov/tolapp/ovra/index.htm>.

If you were born or adopted out of state, contact the local county records office where you were born or adopted for instructions of how to obtain a copy of your birth certificate.

Marriage certificates and divorce decrees must be ordered from the county clerk in which the marriage or divorce was granted. Contact information for the largest Texas counties' clerks are listed below:

Bexar County	(210) 335-2216	https://www.bexar.org/2946/County-Clerk
Dallas County	(214) 653-7099	https://www.dallascounty.org/government/county-clerk/
Collin County	972-548-4185	https://www.collincountytx.gov/county_clerk/Pages/default.aspx
El Paso County	(915) 546-2071	https://www.epcounty.com/clerk/
Harris County	(713) 274-8600	https://www.cclerk.hctx.net/
Hidalgo County	(956) 318-2100	https://www.hidalgocounty.us/161/County-Clerks-Office
Tarrant County	(817) 884-1195	https://www.tarrantcounty.com/en/county-clerk.html

Travis County (512) 854-9188
<https://countyclerk.traviscountytx.gov/>

12.5 Credit Cards

If you find that your credit cards were lost or left behind, your best option is to call the bank that issued the card and get a new one as soon as possible. If you expect to have any issues with missed or late payments or spending limits, you should address them with your credit card issuer as promptly as possible. The issuer may have programs or policies in place to ease the burden on customers facing emergency situations.

When personal documents and credit cards are unsecured, you should be on guard against identity theft. One step you can take is to place a fraud alert on your credit report, which will make it harder for criminals to open accounts in your name. To do this, you should contact one of the three major credit bureaus, each listed below. Each bureau is required to notify the other two when a fraud alert is listed. The fraud alert is free and lasts for one year. You can find more information at <https://www.consumer.ftc.gov/articles/0275-place-fraud-alert>.

TransUnion 800-680-7289
<https://www.transunion.com/fraud-victim-resource/place-fraud-alert>
Experian 888-397-3742
<https://www.experian.com/fraud/center.html>
Equifax 800-525-6285
<https://www.equifax.com/personal/credit-report-services/credit-fraud-alerts/>

12.6 Children's Texas Immunization Records

The statewide immunization registry, known as ImmTrac2, will keep an electronic immunization record for those children that have registered. Information contained in the registry includes the child's name, date of birth, address, the name of the parent or guardian, information on the shots given, and who gave them. Optional information stored in ImmTrac2 is the child's Social Security number and mother's maiden name. This optional information helps prevent duplicate records from being created.

Immunization information is available only to persons authorized by law to see it. Only doctors, schools, childcare centers, and public health providers with ImmTrac2-issued identification numbers and passwords may view the information. More information can be found at:

Texas Department of State Health Services
DSHS Immunization Unit
1100 West 49th Street
Austin, Texas 78756
Phone: 800.252.9152
<http://www.dshs.texas.gov/immunize/immtrac>

Additional information for patients and parents is available at <https://www.dshs.texas.gov/immunize/parents.shtm> and information for healthcare providers is available at <http://www.dshs.texas.gov/immunize/immtrac/FAQs.shtm>.

12.7 Deeds and Mortgages

These records are maintained by the clerk of court for the county where the property is located. If the deed or mortgage was filed for record, a copy can be obtained from the county clerk. Many records can be obtained online from the county clerk website. Contact information for the largest Texas counties' clerks are listed below:

Bexar County	(210) 335-2216	https://www.bexar.org/2946/County-Clerk
Dallas County	(214) 653-7099	https://www.dallascounty.org/government/county-clerk/
Collin County	972-548-4185	https://www.collincountytx.gov/county_clerk/Pages/default.aspx
El Paso County	(915) 546-2071	https://www.epcounty.com/clerk/
Harris County	(713) 274-8600	https://www.cclerk.hctx.net/
Hidalgo County	(956) 318-2100	https://www.hidalgocounty.us/161/County-Clerks-Office
Tarrant County	(817) 884-1195	https://www.tarrantcounty.com/en/county-clerk.html
Travis County	(512) 854-9188	https://countyclerk.traviscountytx.gov/

12.8 Driver License or Identity Card

If you wish to replace a lost or stolen Texas driver's license or identity card or change the address listed on your card, you can do so online at <https://txapps.texas.gov/tolapp/txdl/>. Alternatively, you can visit any Texas Driver License office and submit a completed Application for Renewal/Replacement/Change (Form DL-14A, available at <https://www.dps.texas.gov/internetforms/Forms/DL-14A.pdf>) along with proof of citizenship or legal residency and two forms of ID (ID requirements available at <http://www.dps.texas.gov/DriverLicense/identificationrequirements.htm>). In either case, the fee for a replacement card is \$11. An additional fee of \$1.75 may be charged if you do not have access to the audit number listed on your driver license or ID card. Additional information on replacing your Texas driver license or identity card can be found on the following website: <https://www.dps.texas.gov/DriverLicense/>.

12.9 Immigration and Citizenship Documents

If you are a permanent resident who needs to replace your Green Card, or a conditional resident who needs to replace your two-year card, you may apply for a replacement card by filing a USCIS

Form I-90 (form and instructions available at <https://www.uscis.gov/sites/default/files/files/form/i-90.pdf>, online filing available at <https://www.uscis.gov/i-90>). For further assistance, visit <https://www.uscis.gov/green-card/after-green-card-granted/replace-green-card>

If you need to replace a Naturalization Certificate, Certificate of Citizenship, or Repatriation Certificate, you may apply for a replacement at https://my.uscis.gov/exploremyoptions/lost_stolen_certificate. If you wish to apply by mail, you will need to complete and submit Form N-565 Application for Replacement Naturalization/Citizenship Document (form and instructions available here: <https://www.uscis.gov/n-565>) and pay a \$345 filing fee. You will also need to provide two passport-style photos and submit additional documents as specified on Form N-565.

12.10 Insurance Documents

To replace lost or destroyed insurance documents, contact your insurance agency. For information regarding flood insurance issued by the National Flood Insurance Program, see <https://www.fema.gov/national-flood-insurance-program>. If you are having problems with your insurance agency or to file a complaint, contact the Texas Department of Insurance Consumer Hotline at 1-800-252-3439 or by visiting <https://www.tdi.texas.gov/>.

12.11 Medicare/Medicaid Cards

To replace a Medicare card, visit the Social Security Administration office or request a replacement through your online *my Social Security* portal by logging in or creating an account at <https://secure.ssa.gov/RIL/SiView.action>. Additional information available at <https://www.hhs.gov/answers/medicare-and-medicaid/how-do-i-replace-my-medicare-card/index.html> and <https://faq.ssa.gov/en-us/Topic/article/KA-01735>. You may also call the National Social Security Hotline at 1-800-772-1213.

To replace a Texas Medicaid card, call toll-free 1-800-252-8263 or visit YourTexasBenefits.com (log into your account and click on "Manage", then click "Medicaid & CHIP Services" in the Quick Links section, then click "View Services and Available Health Information", then click on the "Cards" tab). Additional information available at <https://hhs.texas.gov/sites/default/files/documents/services/quick-answers/Sample-Card-Image.pdf>.

12.12 Passports

If your passport is lost, you should report it lost by going online to the U.S. State Department website at <https://travel.state.gov/content/travel/en/passports/after/lost-stolen.html> and submitting a DS-64 form. You may also send a completed and signed DS-64 form by mail to the address on the form or call 1-877-487-2778 (TTY 1-888-874-7793) to report it lost.

You cannot replace a lost passport by mail or online but must fill out a DS-11 form and make an appointment to apply in person at a passport agency or center. You must bring original

documentation of proof of citizenship, such as an original birth certificate and a government-issued photo ID. To obtain more information regarding replacement of a lost passport, go to <https://travel.state.gov/content/travel/en/passports/apply-renew-passport/apply-in-person.html>.

12.13 Social Security Cards and Payments

To replace a lost, stolen, or destroyed Social Security Card, visit <https://www.ssa.gov/myaccount/replacement-card.html> or call toll-free 1-800-772-1213 (TTD/TTY number: 1-800-325-0778). You can also visit your nearest Social Security Administration office to request a replacement card. Find the nearest location at <https://secure.ssa.gov/ICON/main.jsp>.

If you suspect that your Social Security Number is being used to commit fraud, or if you receive a suspicious call from someone purporting to be the Social Security Administration, contact the Office of the Inspector General's fraud hotline at 1-800-269-0271 or submit a report online at <https://oig.ssa.gov/>.

If you have a problem with your Social Security payment, go to the nearest office of the Social Security Administration, call 800-772-1213 (TTY 800-325-0778), or visit <https://www.ssa.gov/>. Most issues can be handled through your *my Social Security* portal online (log in or create an account at <https://secure.ssa.gov/RIL/SiView.action>). If you do not receive your regularly scheduled payment from Social Security as a result of severe weather or other emergencies, you can obtain emergency payments if necessary. For more information, log onto www.socialsecurity.gov/emergency. Social Security checks can also be direct deposited or put on a SSA-issued credit card (the US DirectExpress card). To replace your DirectExpress card, call 1 (888) 741-1115 or visit <https://www.usdirectexpress.com/>.

12.14 Tax Documents

You can order a copy of your past tax returns online using the "Get Transcript" tool at <http://www.irs.gov>. Just click the "Get Transcript by Mail" button to have a paper copy sent to your address of record. You can also order by phone at 800-908-9946 or by mail by completing and mailing either Form 4506-T or Form 4506T-EZ. Form 4506-T can also be used to request other tax records, such as tax account transcripts, records of account, wage and income and verification of non-filing. For more information or to download the appropriate forms, visit <https://www.irs.gov/newsroom/how-to-get-a-copy-of-your-prior-years-tax-information>.

If you have lost your W-2, 1099, or K-1, you should first contact your employer for a replacement. If you are unable to obtain a replacement from your employer, you can contact the IRS at 800-829-1040. You'll need the following when you call:

1. Your name, address, Social Security number and phone number;
2. Your employer's name, address and phone number;
3. The dates you worked for the employer; and
4. An estimate of the amount of wages you were paid and federal income tax withheld, if any. If possible, you can use your final pay stub to figure these amounts.

12.15 Wills or Other Estate Planning Documents

In Texas, if you have lost your original will, you should execute a new will. This is true even if you have a copy of the original will, because Texas law imposes many burdens on those trying to probate a lost original will. If there are no originals or copies, then a new will must be executed. As a practical matter, even if you have your original will, it may be necessary to draft a new will due to the dramatic change in property value/ownership due to a disaster. Certain gifts in the will may fail if property has been destroyed, or the prior will also may not adequately deal with insurance proceeds as a replacement for specific gifts.

If you do not have the original will for a recently deceased person but do have a copy, the copy can be submitted to probate. To probate a lost will, three things must be proved: (1) due execution (for example, a witness who can testify that the deceased appropriately executed the original will), (2) reason why the original will cannot be produced (for example, a witness who can testify that the will was last seen in a house that was destroyed by fire or flood), and (3) the contents of the will, either with a copy or by a witness who is familiar with the contents. Under Texas law, if a person dies and his/her will cannot be proved, the person is considered to have died intestate and their estate will be distributed according to state law.

13.0 FAMILY LAW, CHILD WELFARE AND FOSTER CARE ISSUES

GENERAL FAMILY LAW

13.1 Overview - General Family Law

Displacement during and after a natural disaster can cause unique legal issues in the family law context. In addition to issues regarding custody, visitation, and child support, incidents of domestic and sexual violence increase after natural disasters according to a 2015 global study by the International Federation of Red Cross and Red Crescent Societies. Researchers attribute this increase to a combination of loss of family members and homes, scarcity of basic resources, displacement, increased stress, and marital conflict. In addition, the lack of security in temporary disaster-relief shelters increases sexual violence towards women and young girls.

This chapter is designed to provide some guidance for attorneys facing family law issues related to a natural disaster.

13.2 Most Common Issues/Questions

- What do I do if I lost the physical copy of my protective order in the disaster?
- I had to relocate to a different state following a disaster. Is my protective order still enforceable?
- How can I make sure my abuser doesn't find me in a disaster-relief shelter?
- I have been sexually assaulted in a disaster-relief shelter. What can I do?
- I am the child's grandparent, but I do not have custody. Can I still enroll my grandchild in school and obtain medical care?
- I had to evacuate my home. Where do I go to modify my child's custody or support order?
- What if my child's other parent refuses to pay child support after the disaster?
- During the disaster my child's other parent evacuated with my child and will not give him or her back. What do I do?

13.3 Summary of the Law

a. Protective Orders

One common way to combat domestic violence and other violence is by obtaining a protective order from a court. Texas law authorizes the courts to issue protective orders for domestic violence, sexual assault, stalking, or trafficking. A protective order is a civil court order to prevent continued acts of violence.

Protective orders for family violence are issued under Title 4 of the Texas Family Code and protective orders for sexual assault, stalking, or trafficking are issued under Chapter 7A of the Texas Code of Criminal Procedure. Protective orders for sexual assault are discussed further in the “FAQ” section.

Family violence includes any intimate partner violence and violence from members of the same household. For a family violence protective order, after notice and a hearing a court must issue a protective order if it finds family violence occurred and is likely to occur again in the future. [Tex. Fam. Code § 85.001](#). An adult member of the family may file an application for a protective order to protect not only the applicant, but also any member of the applicant’s family or household. [Tex. Fam. Code § 82.002](#). An application for a protective order may be filed in the county where either the applicant resides, the respondent resides, or where the violence allegedly occurred. [Tex. Fam. Code § 82.003](#). Certain violations of a protective order can be charged a criminal offense under [Tex. Pen. Code § 25.07\(g\)](#). Other violations can be punished by contempt of court and fined or jailed.

There are many similarities between protective orders issued under Title 4 and Chapter 7A, but the most important distinction is that unlike family violence protective orders, no specific relationship must exist between the victim and the abuser to request a sexual assault, stalking, or trafficking protective order. [Tex. Code. Crim. Proc. § 7A.01](#)

The duration of a protective order typically cannot exceed two years. However, in certain circumstances, the court can enter a protective order that lasts longer than two years and up to the duration of the lives of the offender and victim. [Tex. Fam. Code § 85.025\(a–1\)\(1\)–\(3\)](#) and [Tex. Code. Crim. Proc. § 7A.07](#).

If a court finds, through information provided in the protective order application, that there “is a clear and present danger of family violence,” the court may enter a temporary ex parte protective order, under [Tex. Fam. Code § 83.001](#) without any notice to the individual who allegedly committed the family violence. The same “clear and present danger” requirement is necessary for ex parte applications in protective orders filed under Art. 7A. These ex parte orders are temporary and last no longer than 20 days but can be extended in 20-day period increments on the request of the applicant or the court. [Tex. Fam. Code § 83.002](#).

An applicant can also file for a protective order during a suit for dissolution of marriage and during a suit affecting the parent-child relationship. Protective orders can do more than prevent violence. Protective orders may also establish possession of a child, prohibit the transfer of property, award property temporarily, require payment of child support, and require the abuser to vacate the residence. See [Tex. Fam. Code § 85.021–.022](#) for a full list of what a court may include in a protective order.

b. Conservatorship and Possession

In Texas, custody is referred to as “conservatorship” and “possession.” “Conservatorship” refers to the rights and duties regarding the child and “possession” refers to access to the child. When a Texas court is asked to issue an order affecting child custody, visitation, or support, the original petition filed is called a suit affecting the parent-child relationship (SAPCR). Determining whether Texas has jurisdiction over a custody case may be complicated if the child has lived in multiple states. Prior to filing suit, it is important to know which state is the child’s “home state.” “Home state” is defined as the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than 6 months of

age, the term means the state in which the child lived from birth with a parent or a person acting as the parent. [Tex. Fam. Code § 152.102\(7\)](#).

A Texas court has jurisdiction to make an initial child custody determination if: (1) Texas is the home state of the child (or was the home state within the 6 months before the proceeding and the child is absent but the parent still lives in Texas); (2) the home state of the child has declined to exercise jurisdiction (and the child and the child's parent have a significant connection with the state of Texas and evidence is available in Texas); or (3) all other courts having jurisdiction have declined to exercise it because a Texas court would be the more appropriate forum. [Tex. Fam. Code § 152.201](#).

A Texas court can also have temporary emergency jurisdiction if the child is present in Texas and has been abandoned or it is necessary in an emergency to protect the child because the child, or a parent or sibling, is threatened with abuse. [Tex. Fam. Code § 152.204](#).

One of the main issues in a custody case is allocating rights and duties between the parties. There are two types of conservatorship in Texas: sole managing conservatorship (SMC) and joint managing conservatorship (JMC). [Tex. Fam. Code ch. 153](#). Most custody orders name the parents joint managing conservators. A court will order joint managing conservatorship unless there is a good reason not to, such as family violence. A JMC order normally requires that the parents share decision making about the child's education, medical treatment, and similar issues. A JMC order does not mean that the child's time is split equally between the parents.

In most custody orders, one parent will have the right to decide where the child lives. This person usually has the right to receive child support on behalf of the child. This parent may be referred to as the custodial parent.

When there is a good reason to do so, a court can name one parent as a sole managing conservator. An SMC order can limit or take away the noncustodial parent's access to the child and right to make decisions about the child. The parent who is the sole managing conservator has the exclusive right to make important decisions for the child. See [Tex. Fam. Code § 153.132](#) for a list of the rights and duties of a parent sole managing conservator.

Existing custody orders must be modified in the court which issued the original order (the "court of continuing jurisdiction") unless the case is transferred. See [Tex. Fam. Code §§ 155.201–.202](#) for when an SAPCR can be transferred from the court of continuing jurisdiction to another court in Texas. Under [Tex. Fam. Code § 156.101](#), the standard for modification is that modifying the order is in the best interest of the child and "the circumstances of the child, a conservator, or other party affected by the order have materially and substantially changed." Some common qualifying changes are relocation of the child or change of a parent's employment or income.

Useful Websites

- For general information on many family law issues and sample forms, visit <https://texaslawhelp.org/>
- For general information on protective orders and a sample form, visit

<https://www.texasattorneygeneral.gov/cvs/protective-orders>

- For general information on modification of child support orders, visit <https://texasattorneygeneral.gov/faq/cs-frequently-asked-questions-about-child-support-modifications>
- To apply for legal aid, contact:
 - **Legal Aid for Survivors of Sexual Assault**
1-844-303-7233 (SAFE)
 - **Legal Aid of Northwest Texas, Inc.**
<https://internet.lanwt.org/>
 - **Lone Star Legal Aid, Inc.**
<https://lonestarlegal.blog/>
713-652-0077
 - **Texas Advocacy Project**
<http://www.texasadvocacyproject.org/>
 - **Texas RioGrande Legal Aid, Inc.**
<http://www.trla.org/>
1-888-988-9996
 - **Texas Legal Services Center**
<http://www.tlsc.org>
1-800-622-2520
- Helpful websites and phone numbers:
 - **National Domestic Violence Hotline**
<http://www.thehotline.org/>
1-800-799-7233 (24/7/365 hotline)
 - **Texas Department of Family and Protective Services**
<http://www.dfps.state.tx.us/>
 - **Office of the Attorney General Child Support Division**

13.4 **FAQs—Domestic Violence/Sexual Assault**

Q. 13-1 What do I do if I lost the physical copy of my protective order in a disaster and it is not in the police database?

You can obtain free, certified copies of your protective order by contacting the court clerk for the court that issued your order. [Tex. Fam. Code § 81.002](#). Copies of the protective order should also have been sent to your local law enforcement by the court issuing your order. [Tex. Fam. Code § 85.042\(a\)](#). After receiving an order from the clerk of the issuing court, law enforcement must immediately enter the information into the Department of Public Safety statewide law enforcement information system. [Tex. Fam. Code § 86.0011](#) allows for only a three-business-day grace period from the time law enforcement receives the order to when they must enter the information into the system. If you find out that the court clerk did not forward the protective order to law enforcement, you should ask them to do so immediately.

Even if not filed in the law enforcement information system, your protective order is still enforceable. If you believe your protective order is being violated, you can immediately call 9-1-1. In Texas, a police officer must arrest the violator if the police officer witnesses a violation of your protective order; if the violation occurred outside the police officer's presence, the officer can still choose to arrest the violator. [Tex. Code Crim. Proc. art. 14.03\(a\)\(3\)](#), (b). Additionally, the police officer must remain at the scene if it is reasonably necessary to verify allegations of a violation of your protective order or family violence and prevent any further protective order violations or acts of family violence. [Tex. Code Crim. Proc. art. 14.03\(c\)](#).

Alternatively, a motion for enforcement of your protective order can be filed with the court with original jurisdiction over the protective order, or any county where either the parties reside or where an alleged violation occurred, and the court has the authority to hold the protective order violator in contempt. [Tex. Fam. Code § 81.002](#).

Further, if you relocated to Texas after a disaster and have a protective order that was issued by a court in a different state, it is still enforceable. According to [Tex. Fam. Code § 88.004\(a\)–\(c\)](#), Texas does not require you to have a certified copy of your protective order for it to be enforced. As long as the officer “determine[s] that there is probable cause to believe that a valid foreign protective order exists by relying on any relevant information,” the order will be enforced.

Although not required, it is good practice to keep multiple copies of the protective order, including an electronic version stored on your phone or email. And, if your protective order has been violated, regardless of where the violation occurred or what state you reside in, you can call the police immediately.

Q. 13-2 I had to relocate to a different state following a disaster. Is my protective order still enforceable?

Likely yes. The Violence Against Women Act (VAWA) states that a foreign protective order that meets federal requirements “shall be accorded full faith and credit by the court of another State . . . and

enforced . . . as if it were the order of the enforcing State” [18 U.S.C. § 2265](#)(a). A protective order meets federal requirements if (1) the issuing court had jurisdiction over the parties and matter and (2) reasonable notice and opportunity to be heard was given to the respondent. [18 U.S.C. § 2265](#)(b).

Further, you generally do not need to register or file the protective order in the new state for it to be enforceable. [18 U.S.C. § 2265](#)(d)(2). However, some states do have specific rules regarding registration and filing of protective orders, which may make enforcement easier. Consult an attorney or the laws of the state you relocate to in order to make sure you are in compliance.

If you have relocated to Texas, your foreign protective order will be judicially enforced if the order is valid on its face. [Tex. Fam. Code § 88.003](#). A valid order has the names of both the protected individual and respondent, is current, was rendered by a court with jurisdiction over both the parties and the subject matter, and was rendered after the respondent was given reasonable time for notice and an opportunity to be heard. And, under [Tex. Fam. Code § 88.004](#), a law enforcement officer will enforce a protective order when there is probable cause that a protective order exists and it has been violated. You do not need to register or file your protective order in Texas in order for it to be enforced.

Q. 13-3 *How can I make sure my abuser doesn’t find me in a disaster-relief shelter?*

If you have a protective order, it may include a provision that your address remain confidential. [Tex. Fam. Code §§ 82.011, 85.007](#).

If you have a final order from a SAPCR, such as a child custody or child support order, it must contain the addresses of each party. [Tex. Fam. Code § 105.006](#). Further, each party is under an obligation to notify all other parties of any change of address. However, if a court finds that requiring this disclosure of information subjects the child or conservator to family violence, the court may order that the information not be disclosed to the other party. So, you should first find out if your order exempts you from disclosing your change of address. If it does not, you can file a motion for the court to waive this requirement, under [Tex. Fam. Code § 105.007](#), if providing your address would likely expose you or your child to harassment, abuse, or serious injury.

Texas also has a program called the Address Confidentiality Program (ACP). The ACP is administered by the Office of the Attorney General and designates a post office box address for participants as a way to increase the safety of family violence victims. Participants can use this address in place of an actual residential, business, or school address, and it can be used as the main address for driver’s licenses, school registration, and for most court and government documents. For more information on the program and how to apply, visit <https://www.texasattorneygeneral.gov/cvs/the-address-confidentiality-program-acp>.

Q. 13-4 *I have been sexually assaulted in a disaster-relief shelter. What can I do?*

If you have been sexually assaulted, consider reporting this to the police. You can also contact your local rape crisis center. The National Sexual Assault Hotline at 1-800-656-HOPE (4673) can help you find support in your own community after a sexual assault. You can consider a sexual assault exam, which is available to you even if you do not want to involve the police.

If the offender is arrested, a magistrate’s order for emergency protection (MOEP) may be issued and provided to you. At the time of arrest, an MOEP may be requested on your behalf by the judge, a peace officer, the victim’s guardian, or the state’s attorney. [Tex. Code Crim. Proc. art. 17.292](#). An MOEP will be granted if the offense involved serious bodily injury or the display or use of a deadly weapon. The duration of these orders may be anywhere in the range of 31 to 91 days, depending on the circumstances. You do not have to be present for the order to be issued. If the defendant violates the MOEP by committing family violence, communicating with you or a member of your family, or going within a minimum distance of your residence or place of employment, he or she may be subject to jail time, a fine, and additional criminal charges.

Even if you have not called the police, you can file for a sexual assault protective order (SAPO). You do not have to pay court costs to request a protective order. For help with applying for an SAPO, contact the county attorney or the legal aid program covering your area. An SAPO can be filed in the county where you live, the county where the offender lives, or where an element of the offense occurred. [Tex. Code Crim. Proc. art. 7A.01\(a\) et seq.](#)

At the time you file your application for an SAPO, the judge can enter a temporary ex parte order to protect you and other members of your family or household on a finding that there “is a clear and present danger of sexual assault or abuse.” To grant this temporary order, the judge will review the affidavit that you submitted in your protective order application. The purpose of the temporary protective order is to protect you until the protective order hearing takes place. At the final hearing, the court will grant the SAPO if it finds there are reasonable grounds to believe the applicant is a victim of sexual assault. For a pro se SAPO packet, visit https://texaslawhelp.org/sites/default/files/2016_sapo_-_fillable.pdf.

Lastly, sexual assault victims are guaranteed certain rights under Texas law, regardless of whether you have reported the assault. For an overview discussion of these rights, see generally http://taasa.org/wp-content/uploads/2015/06/BR_KnowYourLegalRights_2014.pdf; <https://texaslawhelp.org/article/sexual-assault-examinations-without-police-involvement>; and <https://www.texasattorneygeneral.gov/cvs/sexual-assault-information-for-adult-survivors>.

13.5 FAQs—Conservatorship

Q. 13-5 *I am the child’s grandparent, but I do not have a court order for custody. Can I still enroll my grandchild in school and obtain medical care?*

Yes. There are a couple of different routes a nonparent can take to gain the authority needed to make these types of decisions for the child.

If you have one parent’s cooperation, under [Tex. Fam. Code § 34.002](#) a parent can sign an “authorization agreement” to authorize an adult caregiver to provide temporary care for a child. If the agreement is signed and sworn to before a notary public, the adult caregiver can authorize medical treatment, obtain health insurance coverage for the child, enroll the child in school, authorize the child’s participation in recreational activities, authorize the child to obtain a driver’s license, authorize the child’s employment, receive public benefits on behalf of the child, and obtain personal identification documents for the child. For a full list of what the agreement must contain, see [Tex. Fam. Code § 34.003](#).

However, under [Tex. Fam. Code § 34.008](#), an authorization agreement will be terminated if the parent revokes consent, gives notice to all parties, and files the revocation with the appropriate clerk of county. Further, if a court enters an order regarding custody or placement of the child, access to or visitation with the child, appointment of guardianship, or anything affecting the parent-child relationship, the authorization agreement will be terminated. To view the form, along with instructions for completing it, visit https://www.dfps.state.tx.us/site_map/forms.asp.

If you do not have the parent's cooperation, another option is to request an order for temporary authority for care of a minor child. Under [Tex. Fam. Code § 35.002](#), if the child has lived with you for at least the last 30 days before the date the petition was filed, there is not already a written authorization agreement in place, and the parent or guardian of the child does not object to you having authority to care for the child, you can ask the court for temporary authority. After filing the petition, a hearing will be set. Under [Tex. Fam. Code § 35.005](#), if the child does not have a parent available to give consent, the court must award temporary authority if "it is necessary to the child's welfare and no objection is made by the child's parent, conservator, or guardian." This authority also allows you to consent to medical treatment and enroll the child in school. The order lasts for one year.

Helpful information for grandparents may be found in the "Texas Kinicare Primer" available online at: <https://texaslawhelp.org/article/texas-kinicare-primer#toc-3>.

Q. 13-6 *I had to evacuate my home. Where do I go to modify my child's custody or support order?*

After a Texas state court has made a custody determination, that same court maintains exclusive continuing jurisdiction, under [Tex. Fam. Code § 152.202](#), for all future modifications and determinations surrounding a child, unless the child and both parents leave the state or neither the child nor one parent maintains a significant connection with the state. If the child still lives in Texas, but has moved to a different county for at least six months, the court of continuing jurisdiction must transfer the case to the new county if timely requested. [Tex. Fam. Code § 155.201](#).

Q. 13-7 *What if my child's other parent refuses to pay child support after the disaster?*

When circumstances change, a parent paying child support can ask the court to modify the child support order. The standard for modification under [Tex. Fam. Code § 156.401](#) is a "material and substantial change in the circumstances of a child or a person affected by the order." Usually this is satisfied if the noncustodial parent's income has decreased or the child's living arrangements have changed. So, it could be possible that loss of a job because of a natural disaster would satisfy the material and substantial change needed to lessen a child support amount. But the parent must file for a modification with the court in order for it to be effective and must continue paying the support in the current order until the modification is granted.

If the parent does not take these steps, he or she is still under a legal duty to pay child support. The Office of the Attorney General is responsible for the enforcement of child support orders. If the parent is not paying child support, contact the Child Support Division for help filing an enforcement action. If the noncustodial parent has relocated to a different state because of the disaster, the Uniform Interstate

Family Support Act (UIFSA) allows for the enforcement of a child support order over an obligor living in another state.

Custodial parents can call the Child Support Division of the Attorney General's Office 24-hour hotline at (800) 252-8014 for more information and assistance.

Q. 13-8 *During the disaster my child's other parent evacuated with my child and will not give him or her back. What do I do?*

Under [Tex. Fam. Code § 157.371](#), if a child has been taken in violation of a custody order, a parent may file a petition for writ of habeas corpus in the court of exclusive continuing jurisdiction or a family court located in the county where the child is found. If the court finds the petitioner is entitled to possession under a valid court order, it must compel the return of the child to the petitioner. The only instances in which the court may not grant the order is if it finds the previous court order governing possessory rights of the child did not give the contestants reasonable notice and an opportunity to be heard, if the person with custody voluntarily relinquished possession for more than six months, or if it finds that there is a serious immediate question concerning the welfare of the child.

[Tex. Fam. Code § 42.002](#) also provides for civil liability for any person who takes a child, retains possession of a child, or conceals the whereabouts of a child in violation of a court order specifying another person's possessory right to that child. Damages can include the costs, including attorney's fees, accumulated in locating and recovering possession of the child and enforcing the order in court. Further, the plaintiff can recover for his or her mental suffering and anguish that stems from a violation of the possessory order. If the parent who took the child acted with malice or intent to cause harm to the plaintiff, he or she may also be liable for exemplary damages. [Tex. Fam. Code § 42.006](#). You should consult an attorney to pursue any such action.

13.6 Education

For information regarding enrolling children in school, special education, or any other education issues post-disaster, please see the education chapter.

13.7 Powers of Attorney

A power of attorney (POA) may be a useful tool in the care of a child or an elder parent. A POA is a legal document that authorizes one person to take action on behalf of another person. The scope authorized in a POA can be very broad, or limited to a specific purpose or transaction.

A power of attorney for a nonparent caregiver gives an agent permission to make decisions for a child that a parent would usually make. An example of this is the "authorization agreement" discussed in detail in **Q. 13-5** above.

To assist in the caregiving of an elder parent, a person may wish to be able to have decision-making authority over the affairs of their elder parent. In this case, a person may wish to take control (1) immediately (*durable power of attorney*), (2) upon the incapacity or disability of an elder parent (*springing power of attorney*) or (3) when a medical treatment decision arises and the elder parent is mentally or physically unable to make a decision (*medical power of attorney*).

In order for a POA to be legally enforceable, an adult must acknowledge the authorization of power in writing in the witness of a notary public or other person authorized to “take acknowledgments to deeds of conveyance” or “administer oaths.” Texas Est. Code § 751.0021. In Texas, the easiest way to ensure a POA will be in compliance with the legal requirements is to utilize the form titled [Statutory Durable Power of Attorney](#) that the Texas legislature has provided at Texas Est. Code § 752.051. This form will allow an elder parent to give their child permission to access bank accounts, sell property and make other important decisions when such elder parent becomes incapacitated or unable to make decisions. By default, the durable POA will stay in effect until revoked by the elder parent or until such elder parent dies.

13.8 Family Law and COVID-19

The COVID-19 pandemic presents unprecedented challenges in the area of family law. Below is a brief summary of how family law issues are being affected by COVID-19 and the resulting Texas courts orders, closures and updates.

In addition to the resources presented in the [Useful Websites](#) section above, TexasLawHelp provides general information related to family law and COVID-19 at <https://texaslawhelp.org/article/family-law-issues-during-covid-19>.

a. Possession Orders

Possession of and access to a child is not affected by any shelter-in-place order or other order restricting movement issued by a government entity because of COVID-19. If a parent is already subject to a court-ordered possession schedule, the Texas Supreme Court has issued an order, in effect until July 15, 2020, clarifying that the existing trial court order controls for purposes of determining a parent’s right to possession of and access to their child. See the [Texas Supreme Court’s Seventh Emergency Order Regarding the COVID-19 State of Disaster](#). If a child’s possession schedule is tied to the school calendar, the original published school schedule will still control the schedule, and possession of and access to the child will not be affected by any school closure that arises due to COVID-19. See the [Texas Supreme Court’s Twelfth Emergency Order Regarding the COVID-19 State of Disaster](#).

If a parent is concerned about their child staying with the child’s other parent (e.g., someone in the household has been diagnosed with or exposed to COVID-19), the most expedient option is to discuss their concerns with the other parent to arrange a plan for possession and access that allows for the child to remain safe and healthy. If a discussion with the child’s other parent is unsuccessful and the parent believes that the child is in imminent danger, a person may call 9-1-1 (for an emergency) or CPS at (800) 252-5400 (if abuse or neglect is suspected).

The possession order remains in effect unless and until you go to court to modify it and the judge agrees that it is in the best interests of the child to modify the current schedule. In the event that a parent chooses to withhold their child from the child’s other parent because of concerns related to COVID-19, he or she will be violating a court order and subject to the associated risks. See **Conservatorship and Possession** above for more information regarding modifying a possession order and <https://texaslawhelp.org/article/coronavirus-and-child-visitation> for general information regarding the effect of COVID-19 on possession orders.

b. Court Procedure Rules

The Texas Supreme Court has issued a series of emergency orders to adjust court procedure rules in light of the COVID-19 pandemic. The Twelfth Emergency Order Regarding the COVID-19 State of Disaster prohibits courts from conducting any in-person proceedings contrary to guidance issued by the Office of Court Administration regarding social distancing, maximum group size, and other restrictions and precautions. It also requires courts to use all reasonable efforts to conduct proceedings remotely.

More specifically, in-person proceedings of any size should be delayed until at least June 1. Essential proceedings may occur in-person only if holding the proceeding remotely is not possible or feasible. The scope of “essential” proceedings has not been defined, but examples include CPS removal hearings, temporary restraining orders and temporary injunctions, and family violence protective orders.

Contact your local county or the applicable court in your jurisdiction to determine the latest information. See <https://texaslawhelp.org/article/court-closures-orders-postponements-and-updated-procedures-due-covid-19> for more information regarding Texas courts orders, postponements, closures and updates due to COVID-19.

c. Job Loss and Child Support

A parent is still responsible for child support payments despite job loss during the COVID-19 pandemic. A court ordered child support order may only be amended through a court order. There is no suspension of wage withholding from paychecks as a result of the COVID-19 pandemic.

If a parent has lost their job and begun receiving unemployment benefits, those benefits do count as income for the purposes of child support calculations. Child support will be taken from your unemployment benefits through wage withholding. In contrast, if a parent receives a stimulus check from the federal government pursuant to the CARES Act, child support obligations will likely remain unaffected, as these checks are not considered income for purposes of calculating child support. Note, however, that there is no exception for child support payments in arrears. Therefore, in some instances, a stimulus check may be intercepted up to the total amount of child support owed. See <https://www.texasattorneygeneral.gov/child-support/covid19/your-child-support-and-federal-stimulus-payment> for more information.

Although it will not affect a parent’s obligation to provide child support, job loss may provide a basis for asking the court to modify the amount of the child support payment. Modifying a child support order is discussed in detail in **Q. 13-7** above.

Currently, physical child support offices are closed to visitors due to the COVID-19 pandemic. However, the Office of the Attorney General Child Support Division services will continue to be provided over the telephone and internet. If a parent has specific questions about child support payments, the Office of the Attorney General Child Support Division is now offering the ability to chat with live child support customer service specialists through their website at <https://www.texasattorneygeneral.gov>.

CHILD WELFARE AND FOSTER CARE

13.9 Overview- Child Welfare and Foster Care Issues

Disasters can uniquely impact families involved in the child welfare system and children and youth in foster care. This section provides a brief overview of how these systems function, resources to support clients involved in these systems, and answers to specific questions that may arise during disasters.

13.10 Common Issues/Questions

- Can reports of abuse or neglect be made during a disaster?
- I've been reported for abuse or neglect of a child – what do I do now?
- What do I do if I cannot comply with my CPS service plan?
- What is CPS supposed to do during a disaster?
- How will my CPS court hearings be impacted by a disaster?
- What do I do if I am displaced during a disaster and CPS is investigating me?
- How can I make sure my child, who is in foster care, is safe during a disaster?
- How am I supposed to have visits with my child who is in foster care during a disaster?
- How can I make a complaint against CPS?
- How can I help children and youth in foster care during a disaster?
- What resources are available for homeless youth during disasters?

13.11 Summary of the Law

a. Parents and Caregivers

Investigation: You might be under investigation by Child Protective Services (CPS) if someone has made a report saying they think your child may be abused or neglected. If you are under investigation, a CPS investigator will come to your home to ask you questions, speak to your children, and may speak to other people about your child's safety. Tex. Fam. Code § 261.302. CPS must decide if your child has been abused or neglected and if your child will be safe in your care. Tex. Fam. Code § 261.301(e). The investigation may be conducted jointly with law enforcement. Tex. Fam. Code § 261.301(f), (h). While the investigation is pending, you may be asked to comply with a temporary safety plan or risk your child being removed. 40

Tex. Admin. Code § 700.515. If CPS finds that abuse or neglect did not occur, they will close the case. But if there are concerns about abuse or neglect, CPS has these options:

Safety Planning: CPS may choose to work with you to create a safety plan that will allow your child to stay safely at home while the investigation is going on. 40 Tex. Admin. Code § 700.515. Both you and the CPS worker must agree on all of the terms, and you must be willing to follow the plan. If you don't follow the plan, there will be consequences, which may include CPS removing your child. If the other parent has been violent and abusive to you, you can request to have separate safety plans from that parent.

Parental Child Safety Placement (PCSP): If your child is not safe in your home, CPS may ask you to send your child to live temporarily with someone else you know and trust who is willing and able to provide a safe home. This is different from a removal. PCSPs are meant to provide temporary safety for your child while giving you a chance to deal with any safety threats in your home. Tex. Fam. Code § 264.901(2); 264.902. The person you pick should be someone who has a close relationship with you or your child.

Family Based Safety Services (FBSS): If a CPS investigation results in a finding that your child may not be safe in your home, you may be allowed to keep your child at home or with a relative while you receive services and work to make your home safer. 40 Tex. Admin. Code § 700.702. Services you may be required to complete include parenting classes, anger management, counseling, drug treatment, or daycare. If you refuse to complete services, CPS can ask a court to order you to participate.

Removal: If a CPS investigation resulted in a finding that your child's safety cannot be ensured by providing services to the family, your child will be removed from your home. A child can be removed by CPS immediately if the investigator and supervisor believe that your child is in immediate danger (Tex. Fam. Code § 262.104); otherwise, CPS needs a court order in order to remove your child without your permission. Tex. Fam. Code § 262.101; 102. If CPS removes your child without a court order, an emergency court hearing must be held with CPS on the first working day after the removal to make sure the judge agrees with the removal. Tex. Fam. Code § 262.106. Regardless of whether your child was removed with a court order or because of an emergency, an "adversary hearing" will be held within 14 days of the removal so you have a chance to tell the judge your side of the story. Tex. Fam. Code § 262.201. There will be additional court hearings throughout the CPS case.

***Many times a parent or caregiver will say that the children were placed with them by CPS. This does not necessarily mean there was a removal or a court order and the attorney should ask more questions about whether there are court orders, were court hearings held and if CPS caseworkers are still visiting the children to assess the case status.

Right to Counsel: Texas law says that you have the right to hire an attorney at any point in the CPS case. If you cannot afford to pay an attorney, and CPS has brought a court case, the court must provide you with a free court-appointed attorney. Tex. Fam. Code § 107.013. You will have to prove that you cannot

afford to pay a private attorney by providing information to the court about your finances and public benefits (food stamps, Medicaid, TANF, etc.). Tex. Fam. Code § 107.013(d). If you have not been appointed an attorney, you need to ask the court to appoint you an attorney as soon as possible and ask that any court hearings be rescheduled until you have a chance to meet with your attorney.

Placement: If your child is removed from your care, CPS will place them in somewhere the caseworker thinks is appropriate where your child will be safe and whether space is available. Tex. Fam. Code § 264.107; 40 Tex. Admin. Code § 700.1309. Your child may initially go to a single foster home, a children’s shelter for temporary care, or a group foster home. 40 Tex. Admin. Code § 700.1307. If you have more than one child removed, CPS will try to keep them together, but it is not always possible. 40 Tex. Admin. Code §§ 700.1309, 700.1327. If you want your child to stay with a family member or someone you trust, you should help your caseworker contact the potential caregiver so that CPS can run background checks and complete an evaluation of their home. Tex. Fam. Code § 262.114. Even if CPS does not want to place your child with a family member or trusted friend, your attorney may be able to convince the judge that placing your child where you want is best for your child. While your child is in foster care during the CPS court case, they are in the “temporary conservatorship” of the state. Tex. Fam. Code § 262.201(h), (j). If your child stays in foster care after your CPS court case is over, they are in the “permanent conservatorship” of the state. Tex. Fam. Code § 263.404.

Visitation: During the CPS court case, you have a right to have visits with your child while your CPS case is pending, but this right can be limited if CPS or the judge thinks it may be harmful to your child to visit with you. Tex. Fam. Code §§ 262.115, 263.107. Your visits will probably be supervised by CPS, especially early in the case. If your visits go well, the court may allow a family member or friend to supervise or may allow you to have unsupervised visits. If your parental rights are terminated at the end of your CPS court case, you will no longer have the right to visit your child.

Case Resolution: CPS cases are supposed to be resolved in 12 months and no longer than 18 months. Tex. Fam. Code § 163.401. The judge can order one of three things at the end of the case: (1) your child can be returned home to you (Tex. Fam. Code § 163.403); or (2) CPS, a family member, or a friend can be appointed as your child’s “managing conservator” but not terminate your parental rights (Tex. Fam. Code § 163.404); or (3) your parental rights can be terminated (Tex. Fam. Code § 263.407). If your parental rights are not terminated, you may still have an opportunity to ask the court for visitation with your child or ask the court to return your child to you at a later time. Tex. Fam. Code § 163.263.408(a)(1)(B). If your parental rights are terminated, CPS will assume the parent role for your child and may allow your child to be adopted.

b. Children and Youth

Advocacy during TMC: When a child is in the temporary managing conservatorship (TMC) stage of foster care, an attorney ad litem (AAL) must be appointed for the child. Tex. Fam. Code § 107.012. The attorney ad litem is required to represent the goals and interests of the child. Tex. Fam. Code § 107.004. A guardian ad litem (GAL) is also appointed while the child is in TMC—the guardian is required to report to the court

on what they believe is in the best interest of the child (which may not always be in agreement with what the child wants). Tex. Fam. Code § 107.011. Often the GAL is a Court Appointed Special Advocate (CASA), a community volunteer. All children are required to attend permanency hearings (following the initial adversary hearing) and the judge must, if the court determines it is in the best interest of the child, consult with children age 4 or older about their permanency plan. Tex. Fam. Code § 263.302.

Advocacy during PMC: When a child is in the permanent managing conservatorship (PMC) stage of foster care, the court can choose whether to extend the appointments of the AAL or GAL for as long as the child remains in the conservatorship of the state. Tex. Fam. Code § 107.016. If the AAL is dismissed, the child will no longer have an attorney to represent their interests. If the AAL appointment is extended, the AAL must continue to represent the goals and interests of the child. Tex. Fam. Code § 107.004(a). The child will continue to be required to attend all court hearings while in PMC. Tex. Fam. Code § 263.302.

Rights in Foster Care: All children and youth in foster care have specific rights that must be upheld and protected by CPS. These rights concern the child's safety and care, contact with family, normalcy, discipline, medical care, etc. The *Rights of Children and Youth in Foster Care* can be accessed [here](#). If a child or youth's rights are violated in any way while in foster care, they can contact the [Foster Care Ombudsman](#) to file a complaint (until they turn 18).

Extended Foster Care: Youth who are in foster care when they turn 18 may choose to remain in extended foster care until they turn 21 (or 22 if they are enrolled in high school or a program leading toward a high school diploma or high school equivalence certificate (GED)). 40 Tex. Admin. Code § 700.346. If they choose to leave foster care at any time before they turn 21, they can also return to extended foster care. 40 Tex. Admin. Code § 700.346(e). In order to be eligible for extended foster care, youth must meet one of these criteria: (1) attend college or higher learning institution or post-secondary vocational program or technical program (6 credit hours minimum); (2) participate in an employment program or activity that promotes or removes barriers to employment; (3) work at a job at least 80 hours per month; OR (4) have a documented medical condition that limits other activities. 40 Tex. Admin. Code § 700.346(a). The availability of a placement may limit whether an aged-out foster youth can return to extended foster care. *Id.* Supervised independent living (SIL) placements are only available to youth in extended foster care. 40 Tex. Admin. Code § 700.347. The court can choose to extend the appointment of the AAL, GAL, or volunteer advocate. Tex. Fam. Code § 263.605.

Extended Jurisdiction: The CPS court will retain jurisdiction over a young adult for as long as they are in extended foster care or during trial independence (which lasts 6-12 months after exiting care). The young adult has the same rights as any other young adult. The CPS court's jurisdiction is only for the purpose of finding whether the young adult's placement is safe and appropriate and whether CPS is providing all services and supports to help the young adult become independent and meet their needs. Tex. Fam. Code § 263.602. The youth can also request that the court retain jurisdiction until they turn 21. Tex. Fam. Code § 263.6021(a). In any case, the court's jurisdiction will automatically end at age 21. Tex. Fam. Code § 263.6021(b). As long as the youth is in extended foster care, a placement review hearing must be held every six months. Tex. Fam. Code § 263.602(b). Youth who have left extended care but continue to be

under the jurisdiction of the court and are receiving transitional living services can request a hearing to review aftercare services. Tex. Fam. Code § 263.6021(c).

Transition Issues: Youth transitioning out of foster care into independent adulthood may face a number of challenges, not the least of which include obtaining gainful employment and safe and stable housing. Other challenges transitioning youth may encounter include obtaining their identification documents, accessing Medicaid benefits and the healthcare system, re-establishing and maintaining contact with siblings or other family members, juvenile and criminal issues, obtaining their CPS records, immigration and citizenship issues, accessing foster youth benefits and extended care, name change issues, and issues related to their education. Youth can learn about all these issues and more in [A Guide to “Aging Out” of Foster Care in Texas](#).

13.12 Useful Websites

a. General Information

[Children’s Commission](#)

[DFPS Policy Handbooks](#)

[DFPS Office of Consumer Relations](#)

b. For Parents/Caregivers

Parent Resource Guide ([English](#) | [Spanish](#))

[TLSC Family Helpline](#)

c. For Current and Former Foster Youth (and those that help them)

[Foster Care Ombudsman](#) (only for those under 18 and in foster care)

[Rights of Children and Youth in Foster Care](#)

[Texas Foster Youth Justice Project](#)

[Texas Youth Helpline](#) (call, text, or chat)

[Regional Preparation for Adult Living \(PAL\) Coordinators](#)

[Regional Transition Centers](#)

[Texas Homeless Youth Handbook](#)

13.13 FAQs

Q. 13-9 Can reports of abuse or neglect be made during a disaster?

Yes, even in a disaster the State Wide Intake (SWI) department of the (Department of Family and Protective Services (DFPS) will remain open and will accept reports of abuse or neglect. Reports can be made to the Texas Abuse Hotline at **(800) 252-5400** or online via the [Texas Abuse Hotline Website](#) if the situation is not urgent. Reports will be investigated according to DFPS procedures. For additional information about how DFPS should operate during a disaster, you may view DFPS’ Disaster Plan [here](#).

***Attorneys should remember that they are considered “mandated reporters” under Tex. Fam. Code § 261.101 and have a duty to report suspected child abuse and neglect that supersedes all privacy,

confidentiality, and privilege protections. Best practices for reporting include telling clients about your duty to report so they can choose what to tell you. If you must report, invite your client to make the report with you and, if the situation is not urgent, report using the website so you can control how much and what information is shared with DFPS.

Q. 13-10 ***I've been reported for abuse or neglect of a child – what do I do now?***

Make sure you have all the information about the investigation. Find out the contact information for the caseworker and the caseworker's supervisor. Make sure you have copies of any safety plan, service plan, or any other document related to the investigation. Communicate with the investigator often and update them whenever anything changes—your contact information, your availability, or any changes regarding your child. Check your voicemail, text messages, email, and regular mail often to make sure you do not miss a communication with the investigator or someone else related to the investigation. Keep all documents and contact information in a safe place. Call the [CPS Family Helpline](#) if you want to talk to someone about your questions and review the **Parent Resource Guide** ([English](#) | [Spanish](#)) so you know what to expect from the investigation and any future court case that may be filed.

If the investigation finds there is “reason to believe” you committed abuse or neglect, your name will be included in the DFPS central registry of abuse and neglect which, while not available to the public, can limit your opportunities to work with children or foster or adopt children. Tex. Fam. Code § 261.002; 40 Tex. Admin. Code § 702.251. You should know that even if they don't remove your children or take any other action, they may still make this finding and it will stay on your record unless you take required steps to challenge the finding by the applicable deadline.

You can request an Administrative Review of Investigation Findings (ARIF). An ARIF provides an informal review process for a person who has been designated as a perpetrator of abuse or neglect. 40 Tex. Admin. Code § 700.516(a). If you want to request an ARIF, you must submit a written request to DFPS within 45 days after receiving notice of the findings of the investigation. 40 Tex. Admin. Code § 700.516(b). You may hire an attorney to represent you at the ARIF, but you do not have to. 40 Tex. Admin. Code § 700.516(g). If the ARIF is not favorable, you can then request a due process hearing to be held before the State Office of Administrative Hearings (SOAH) or you can waive the ARIF and proceed directly to the SOAH hearing. 40 Tex. Admin. Code § 700.516(k).

Q. 13-11 ***What do I do if I cannot comply with my CPS service plan?***

If you are not able to comply with your CPS services plan because of a disaster or another reason, you should contact your investigator or caseworker as soon as you find out that you will not be able to comply, but you should make every effort to comply. Try to find creative ways to access services (for example, find out if virtual counseling or parenting sessions are available). If the services you are required to complete are not being offered, you should not have to resume the services until they are offered again.

Q. 13-12 *What is CPS supposed to do during a disaster?*

Foster and adoptive parents caring for children in foster care have to notify their caseworker if they are impacted by a disaster. If required by local city or county authorities, foster and adoptive parents will be required to evacuate their homes. They must take a two-week supply of medication in its bottle, other medical supplies and equipment, important paperwork, their personalized disaster plan, and contact information for the family's and child's caseworkers and supervisors. CPS Handbook Section 7642. Other functions of CPS, such as investigation and casework of active removal cases, will continue.

Q. 13-13 *How will my CPS court hearings be impacted by a disaster?*

You should contact your attorney about any questions you have about your court hearings. If you are not represented by an attorney you should ask the caseworker, check the courthouse website, and call the court's office to ask about hearings. A disaster may impact whether the courthouse is open and how the hearings are handled. Your hearing may be rescheduled or may take place virtually. You should talk to your attorney about whether it is possible for you to appear at the hearing virtually (by telephone or video) if you are unable to attend.

Q. 13-14 *What do I do if I am displaced during a disaster and CPS is investigating me?*

You need to make sure you communicate with your investigator or caseworker if there are any changes in your residence or contact information. There may be consequences in your case if you do not update your investigator or caseworker of your displacement and they cannot reach you. Lack of communication with your investigator or caseworker and absence from your home could be considered to be interference with an investigation (Tex. Fam. Code § 261.303) or failure to cooperate with investigation (Tex. Fam. Code § 261.3031). In fact, it is a criminal offense if you intend to interfere with the investigation and relocate your residence without notifying CPS of your new address or you conceal your child and your relocation or concealment interferes with the investigation. Tex. Fam. Code § 261.3032.

Q. 13-15 *How can I make sure my child, who is in foster care, is safe during a disaster?*

You can contact your caseworker for updates on your child's safety. The caseworker is required to provide you with updates of "significant events", which include any changes in placement, as soon as possible. Tex. Fam. Code § 264.018. Keep in mind that your caseworker will be extremely busy following up with all the children on their caseload and may not be able to contact you immediately.

Q. 13-16 *How am I supposed to have visits with my child who is in foster care during a disaster?*

CPS should make every attempt to coordinate visits as long as the visit will not harm your child. If in-person visits are not possible, CPS should try to arrange a virtual visit. You should communicate with your caseworker about the best way to continue visits in a way that will continue to keep your child safe.

Q. 13-17 *How can I make a complaint against CPS?*

Complaints about CPS can be made through the [Office of Consumer Relations](#) (OCR). You can contact the OCR in a number of ways:

- Phone: (800) 720-7777, Monday – Friday, 8:00AM – 4:30PM
- Complete an online complaint form
- Print a form and return by email, fax, or regular mail
- Email: OCR@dfps.state.tx.us
- Fax: (512) 339-5892
- Regular mail: OCR/DFPS, PO Box 149030, Mail Code Y946, Austin, TX 78714-9030

Note that the OCR can only investigate and review decisions made by CPS—they cannot change a court order or review actions taken by law enforcement. If you want to challenge a court decision, you need to talk to your attorney.

Q. 13-18 *How can I help children and youth in foster care during a disaster?*

Children and youth in the temporary managing conservatorship (TMC) stage of foster care are required to have an attorney ad litem (AAL) and a guardian ad litem (GAL). Tex. Fam. Code § 107.011, 107.012. While they are represented by both an AAL and GAL, the child’s objectives, as well as what is in the child’s best interest, should be presented to the court. If you find out that a child who is represented by an attorney is not being properly represented, the youth can contact the [Foster Care Ombudsman](#) to file a complaint. A supportive adult can also try to contact the child’s attorney to advocate on the child’s behalf to their attorney.

If a child or youth in foster care is no longer in TMC and is not represented by an attorney, there is no reason why a private attorney cannot represent the child or youth if the child or youth requests the representation. While a minor does not have the capacity to enter into a binding contract, an attorney may agree to represent the minor with all the ethical obligations and privileges associated with an attorney-client relationship. Attorneys and supportive adults wanting guidance about working with foster youth can contact the [Texas Foster Youth Justice Project](#).

Supportive adults are critical to the success of a youth’s transition out of foster care. Since many youth are no longer in contact with their family, having a supportive adult to go to for advice and help navigating the adult world can make a positive impact. The needs of a child or youth in or transitioning out of foster care during a disaster are intensified. They are always at a great risk of exploitation and homelessness and can experience trauma and instability. Aged out foster youth can connect with supportive benefits and services through their [Regional PAL Coordinator](#) or [Regional Transition Center](#).

Q. 13-19 *What resources are available for homeless youth during disasters?*

Various programs exist across Texas to address the needs of homeless youth. See the [Provider Directory](#) compiled by the Texas Network of Youth Services (TNOYS) to find emergency shelters, drop-in centers,

housing providers, counseling providers, and transition centers. You can find more information for homeless youth in the [Texas Homeless Youth Handbook](#).

14.0 EDUCATION LAW ISSUES

14.1 Overview

Federal law provides protections for children who are homeless or become displaced as a result of a disaster. The code defines “homeless children and youths” as children who do not have a fixed, regular, and adequate nighttime residence. [42 U.S.C. § 11434a\(2\)\(A\)](#). The McKinney-Vento Act includes protections for children and youths who reside in shelters, transitional housing, cars, campgrounds, hotels, motels, and even those children and youths who are forced to live with others temporarily because of a disaster. [42 U.S.C. § 11434a\(2\)\(B\)](#).

14.2 Homeless/Displaced Students Are Entitled to Immediate Enrollment

The McKinney-Vento Act guarantees the right of homeless/displaced students to enroll immediately into the public school that serves the attendance area where the students are staying temporarily. Additionally, [Tex. Edu. Code § 25.001\(b\)\(5\)](#), allows a homeless student to enroll in any school district in Texas, regardless of where they are living temporarily. Thus, to make the best and most informed school enrollment decision, families and students impacted by a disaster should spend some time seeking additional guidance on what to do given their specific circumstances.

14.3 Homeless/Displaced Students Can Enroll Without Documentation

Students who are homeless/displaced as a result of a disaster are entitled to immediate enrollment in public school even if they don’t have the documentation that schools typically require for registration, like proof of residency, birth certificates, and immunization and health records. School districts are required to help students obtain these important documents. For example, school districts should provide English Language Learners (ELLs) who enroll without documentation from their previous school with protections that allow access to appropriate programming. This inquiry is made more accessible after conversations with parents and students, and a review of the documents already within their possession. Advocates can also request that a student’s enrolling district make a Texas Records Exchange (TREx) System request to the student’s previous district, as many impacted districts still have access to electronic student information.

14.4 Other Protections That Homeless/Displaced Students Are Entitled To

First, under the McKinney-Vento Act, homeless/displaced students are eligible for free school meals without delay. Second, homeless/displaced students have the right to go back to their “school of origin” (the school they attended before the disaster), and the school district must provide them with transportation to and from their “school of origin” if a parent or guardian makes a request. Third, homeless/displaced students who enroll in a new school district must receive transportation services that are comparable to the transportation services that other regularly housed students receive. Fourth, school districts must assess the needs of homeless/displaced students and refer those students and their families to appropriate local resources, including health, mental health, dental, housing, substance abuse, and other community-based supports and services. Fifth, homeless/displaced students are entitled to participate in any school and extracurricular activities to the fullest extent. Sixth and finally, if a receiving school does not agree that a homeless/displaced student is eligible to attend that school, the student has the right to remain enrolled pending any appeals, to receive a written explanation of the reasons for the

district's objections to enrollment, and to receive assistance from the district's homeless liaison to dispute the school's decision regarding school selection and enrollment.

14.5 Every School District Is Required to Designate a Homeless Liaison

Every school district in Texas is required to have a homeless liaison that is responsible for coordinating efforts to assist and support homeless/displaced students. The Texas Homeless Education Office (THEO) maintains a current directory of these liaisons: <https://www.theotx.org/liaison/>. THEO also maintains a toll-free hotline: (1-800-446-3142). The hotline is staffed from Monday through Friday, 8:00 A.M. to 8:00 P.M.

14.6 Special Education

Homeless status is exclusive of special education identification, and thus special education programming follows students to any school in which they enroll. Parents who are forced to enroll a student with a disability in a different district because of displacement due to a disaster are entitled to services comparable to what they previously received.

A parent should disclose if their child was previously receiving special education services during the enrollment procedure to ensure that the school gives the student expedited special education services. For students with disabilities who enroll with missing or incomplete special education records, school districts must ensure those students receive a Free Appropriate Public Education (FAPE) by using whatever information is available at the time of enrollment. This information includes, but is not limited to, records provided by the parent, interviews with the parent and student, and conversations with the student's medical and/or mental health providers.

The receiving school must develop temporary Individual Education Programs (IEPs) within ten school days if the student cannot provide sufficient documentation to determine the appropriate programming and services. Within 30 days, the receiving school must then gather additional information, develop or propose new IEPs, and determine the need for further assessment. Knowledge of current programs or supports services prohibits the dismissal of the programs or services without the current assessment. These supports include special education transportation, counseling, occupational therapy, physical therapy, assistive technology, speech therapy, behavior supports, and specialized instruction.

If a disaster destroys a student's records that diagnosed a disability, or established the student's special education eligibility, and consequently were the basis of educational and Admission, Review, and Dismissal (ARD) committee decisions, the school district where the child is enrolled must convene an ARD committee to address the student's specific situation. The ARD committee must determine a course of action to address the lack of documentation and what steps the student needs to take to remain in compliance with the federal framework for special education eligibility. The ARD committee should gather, review, and discuss data and observations from teachers and related services staff that might establish the student's continued eligibility by conducting a Review of Existing Evaluation Determination (REED). If the school district cannot establish the student's eligibility, it must conduct a new assessment with parental consent.

After a disaster, new academic or behavioral needs may arise within a student’s educational program. The student’s school district must convene an ARD committee to determine the best course of action to address the student’s new need.

The Individuals with Disabilities Education Act (IDEA) imposes an affirmative obligation on Texas and its public agencies to identify, locate, and evaluate all children residing in Texas who are suspected of having disabilities and who are in need of special education and related services, regardless of the severity of their disability. This obligation is called “child find.” Texas law also provides specific timelines for school’s to respond to a parent’s written request for special education evaluation so parents should try to make requests for special education evaluation in writing. 19 TAC §89.1011(a).

The IDEA allows children with any disability to receive special education if the disability gives rise to a need for specially designed instruction, which can include modified academic instruction or behavioral supports. 34 CFR §300.8

For a student who is not eligible for receiving special education services under IDEA, but is still experiencing educational difficulties after a disaster, the student may be eligible for disability identification under Section 504 of the Rehabilitation Act. Section 504 provides a broader definition of an individual with a disability and allows for accommodations and supports within the education environment that may be appropriate for a trauma-based diagnosis.

14.7 COVID-19 Related Issues

Students who are homeless or displaced are more at risk of losing services during the COVID-19 pandemic. The protections under the McKinney-Vento Act are still available to homeless/displaced students. Homeless/displaced students may remain enrolled in their “school of origin” if they move outside of their attendance zone.

In addition, school districts remain obligated to carry out their “child find” obligations under IDEA. The COVID-19 pandemic may result in an increase in students experiencing a disability covered by IDEA (including students experiencing a health impairment or a serious emotional disturbance as a result of the pandemic).

Even as many school districts move to distance learning and certain accommodations for students eligible to receive special education may no longer be feasible due to COVID-19, school districts are still required to ensure such students receive FAPE. Parents should collaborate with teachers and administrators to find creative solutions to ensure that students eligible to receive special education receive FAPE in a way that protects the health and safety of students and educators but still meets the educational needs of the students. IEP teams are still required to make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations.¹

¹ See Supplemental Fact Sheet – Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities
<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>

If a student with a disability, including one at high risk of severe medical complications, is excluded from school during an outbreak of COVID-19, and the student's school remains open, then the student is entitled to certain protections under the IDEA. If the exclusion from school lasts longer than ten school days, then such exclusion from school may constitute a change in placement. Under the IDEA, a change in placement is subject to certain procedural safeguards, including requiring decision-making by a group of persons, including the parents and other persons knowledgeable about the child and the placement options. 34 CFR §300.115-116. In addition, Section 504 of the Rehabilitation Act offers other evaluation and procedural safeguards for a change in placement, including periodic reevaluation of the disability determination.² 34 CFR 104.35-104.36

In addition to each school district's homeless liaison and the THEO hotline referenced above under 14.5, THEO is maintaining a list of resources for homeless/displaced students at <https://www.theotx.org/covid-19/>.

Students who move or become homeless during school closures are likely to have trouble contacting the registrar at the nearest campus. If that occurs, they may try reaching the homeless liaison. If the student has a disability, they can also contact the school's special education department. The Texas Education Agency has assembled guidance on many topics related to the pandemic in a centralized location that continues to be updated.³

² See Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>

³ See <https://tea.texas.gov/texas-schools/health-safety-discipline/covid/coronavirus-covid-19-support-and-guidance>

15.0 IMMIGRATION ISSUES

15.1 Overview

Disasters pose unique risks to immigrants. Increased interaction with local and federal law enforcement agencies during disaster relief efforts place immigrants in precarious situations where seeking assistance may jeopardize their ability to remain in the country. Although the rules and eligibility guidelines of many disaster relief programs offer explicit protections for immigrants, it is reasonable for immigrants to be wary of the perceived and actual risks of accepting assistance, namely the possibility of detention and deportation. This chapter addresses the common issues and questions that noncitizens face in disaster situations regarding the exercise of their legal protections and rights.

15.2 Most Common Issues and Questions

Relating to the Federal Emergency Management Agency (FEMA) and the Accessibility of Emergency Assistance:

- Do I qualify for FEMA benefits? If so, how do I access FEMA benefits?
- Will accepting FEMA benefits affect my immigration status or my application to become a legal permanent resident? What are the consequences of sharing the identity of my family members and myself with FEMA or other states agencies that distribute FEMA benefits?
- What if FEMA denies my initial application for FEMA benefits?
- I am undocumented. Is it safe to seek assistance from emergency shelters, food banks, and other nonprofit organizations?

Relating to an Immigration Case:

- What do I do if I missed an immigration court hearing, an appointment with an immigration official, or a biometrics appointment? How do I know if my upcoming appointment or hearing will still take place?
- I have lost my identity and court documents. How can I get new documents?
- What are my options if the disaster has affected my ability to file necessary immigration documents by a set deadline?
- I have an ankle monitor that I must wear while my immigration case is pending, and I cannot leave my house. I cannot keep my ankle monitor charged. What do I do?
- I am temporarily displaced from my home or have moved after the storm. How do I change my address with the court or agency in charge of my case?
- I have a loved one in an immigration detention center. How can I find out if she or he is safe?

Other Questions:

- I am a foreign student whose visa is dependent on my enrollment in school. The disaster has affected my ability to pay for my studies. What are my options?
- Should I be afraid of driving if I am undocumented?
- Somebody stole my wages. If I call the police, will I be deported?

15.3 Summary of the Law

General

Programs for immigrant disaster victims have different requirements and definitions regarding who may apply. Under 44 C.F.R. § 80.3(g), a “qualified alien” for FEMA benefits is an individual who falls under one of the following categories:

- Lawful permanent residents (“green card” holders or LPRs),
- Applicants who have been granted asylum,
- Individuals who have been admitted as a refugee,
- Individuals who have been granted humanitarian parole for at least one year,
- Individuals whose deportation have been withheld,
- Individuals granted conditional entry (per law in effect before April 1, 1980),
- Individuals who were a Cuban and Haitian entrant under the Refugee Education Assistance Act of 1980,
- Aliens in the U.S. who have been abused or subject to battery or extreme cruelty by a spouse or other family/household member, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided,
- Aliens in the U.S. who have been a victim of a severe form of human trafficking with an approved *or pending* petition, or aliens whose children have been battered or subject to extreme cruelty and alien children whose parent has been battered or subject to extreme cruelty who fit certain criteria with an approved *or pending* petition.

Individuals are not eligible for disaster benefits if they have—

- A nonimmigrant visa, such as work, student, or travel visa,
- Temporary protected status (TPS),
- Deferred action for childhood arrivals (DACA),
- A pending asylum application (with a temporary Social Security number), or
- No lawful immigration status (such as an expired visa or entry to the U.S. without inspection).

A “qualified alien” may access disaster relief benefits such as cash assistance through FEMA. Undocumented immigrants will not directly have access to these programs; however, anyone—regardless of their own status—can apply on behalf of a qualified minor child (either a “qualified alien” or U.S. citizen) in the same household.

Public Charge Law

Regardless of how someone applies for disaster relief benefits, it is important to be aware of restrictions that may affect their immigration status, namely the public charge law. A “public charge” is an individual who is likely to receive any number of public benefits for more than an aggregate of twelve months over any 36-month period of time. Any noncitizen receiving cash assistance should be aware of public charge law and any proposed changes of it. Although disaster benefits are not one of the eight enumerated public

benefits programs whose receipt will trigger “public charge” bar, they can still have an impact on immigrants seeking assistance under the new “totality of circumstances” analysis.

Public charge law is particularly relevant to immigrants who are eligible to become lawful permanent residents (eligible to obtain a “green card”) and to immigrants seeking to enter the United States on certain types of visas.

Under [section 212\(a\)\(4\)](#) of the Immigration and Nationality Act (INA), noncitizens who are seeking to enter the U.S. or to become LPRs must show that, in the totality of circumstances, they are not likely in the future to become a “public charge.” In other words, they must show that they are not likely to rely on government assistance programs in the future. The test for determining whether an immigrant’s situation falls under “public charge” involves factors such as an individual’s age, income, resources, family situation, education, and health.

Although it is rare, immigrants may be placed in removal proceedings based on public charge law if they become a “public charge” during the first five years after entering the U.S., and if they meet certain other conditions. National Immigration Law Center, *Access to Health Care, Food, and Other Public Programs for Immigrant Families under the Trump Administration: Things to Keep in Mind When Talking with Immigrant Families*, <https://www.nilc.org/issues/health-care/exec-orders-and-access-to-public-programs/> (last revised April 2, 2018). See also Immigration Legal Resource Center, *Public Charge: What The Community Needs to Know about Public Charge*, https://www.ilrc.org/sites/default/files/resources/2020.02_public_charge_factsheet-02.26_0.pdf (February 2020).

It is important to note that the public charge rules may change. On February 24, 2020, the U.S. Department of Homeland Security (DHS) and the U.S. Citizenship and Immigration Services (USCIS) implemented the Final Rule on Public Charge Found of Inadmissibility, which defines “public charge” as an alien who has received one or more public benefits for more than 12 months, in total, within any 36-month period. The rule defines “public benefits” to include any cash benefits for income maintenance, Supplemental Security Income, Temporary Assistance to Needy Families, Supplemental Nutrition Assistance Program, most forms of Medicaid and certain housing programs. For up to date information on the status of public charge regulations, see <https://protectingimmigrantfamilies.org/resources/>.

Tenant Rights

Generally, the rights of a tenant are based on the language of the lease between the tenant and the landlord, and the regulations within the Texas Property Code. For a more general discussion of tenant rights following a disaster, see chapters 4 and 5 of this outline. In the aftermath of a disaster, undocumented tenants may face additional challenges when trying to enforce their renter rights or obtain new housing. As federal and state law does not provide clear guidelines on what immigrants should do if they are in such a situation, it is advisable for undocumented disaster victims to consult a qualified immigration attorney for guidance.

Generally, the federal Fair Housing Act (FHA) prohibits a landlord from refusing to rent based on “race, color, religion, sex, familial status, or national origin.” [42 U.S. Code § 3604](#). Case-law is shifting towards establishing that undocumented persons receive FHA protections. See *Central Alabama Fair Housing Center v. Magee*, [835 F. Supp. 2d 1165](#), 1196 (M.D. Ala. 2011) (noting that “the FHA protects ‘any person,’ regardless of his immigration status), vacated as moot, 2013 WL 2372302 (11th Cir. May 17, 2013), and *De Reyes v. Waples Mobile Home Park Ltd. Partnership*, [903 F.3d 415](#), 431-432 (4th Cir. 2018), cert. denied sub nom. Waples Mobile Home Park Ltd. P'ship v. de Reyes, 139 S. Ct. 2026, 204 L. Ed. 2d 218 (2019) (“There is no exemption for liability under the FHA for policies aimed at illegal immigrants. Consequently, in the absence of a specific exemption from liability for exclusionary practices aimed at

illegal immigrants, we must infer that Congress intended to permit disparate-impact liability for policies aimed at illegal immigrants when the policy disparately impacts a protected class, regardless of any correlation between the two.”).

Employee Rights

Undocumented workers cannot qualify for regular unemployment compensation. However, if an immigrant has a valid work permit, has lost a job because of a disaster, and has met other requirements, they may qualify for regular unemployment compensation. To apply online, visit www.twc.state.tx.us/jobseekers/unemployment-benefits-services. For more information, see chapter 6 of this outline.

If an immigrant does not qualify for regular unemployment benefits, they may consider applying for Disaster Unemployment Assistance (DUA) – assistance that provides financial help to employed or self-employed workers in a federal disaster area whose employment is lost or interrupted due to a major disaster. DUA is available only to citizens, permanent residents, and people with a valid work permit. You can learn more about DUA at www.twc.state.tx.us/jobseekers/disaster-unemployment-assistance.

In the aftermath of disaster, many people rely on immigrants to repair their homes or businesses; too often, however, undocumented workers are never paid for their labor. The Texas Payday Law, administered by the Texas Workforce Commission (TWC), protects both documented and undocumented workers whose wages are stolen by their employers. Claims must be filed within 180 days after the wages were due. For more information, and for access to forms for filing a claim, go to <https://www.twc.texas.gov/jobseekers/texas-payday-law#howToClaimUnpaidWages>.

15.4 Useful Websites and Contact Information

- FEMA Emergency Assistance Helpline – 1-800-621-3362 (www.disasterassistance.gov/help/contact-us)
- State Bar of Texas Lawyer Referral & Information Service – 1-800-252-9690 (www.texasbar.com/Content/NavigationMenu/ForThePublic/DoYouNeedALawyer/LRISOnlineAttorneyReferral/default.htm)
- Texas RioGrande Disaster Legal Aid – 1-866-757-1570 (www.trla.org)
- Lone Star Legal Aid – 1-800-733-8394 (<https://lonestarlegal.blog/>)
- Legal Aid of Northwest Texas – 1-888-529-5277 (<https://internet.lanwt.org/en-us>)
- Houston Volunteer Lawyers – 1-713-228-0735 (www.makejusticehappen.org)
- American Immigration Lawyers Association – 202-507-7600 (www.aila.org/)
- Houston Immigration Legal Services Collaborative (Houston only, www.houstonimmigration.org)
- Houston Immigrant Rights Hotline (Houston only): 1-833-468-4664
- State Bar of Texas Legal Hotline – 1-800-504-7030 (www.texasbar.com/AM/Template.cfm?Section=Disaster_Relief_Resources1&Template=/CM/HTMLDisplay.cfm&ContentID=46272)

15.5 Frequently Asked Questions

Q. 15-1 Do I qualify for FEMA benefits? If so, how do I access FEMA benefits?

You can apply for assistance after the President declares a disaster in your state and your county is named as a recipient for individual assistance. You can check www.fema.gov/disasters for updates on the status of your state and county. To access benefits, contact the FEMA Helpline at 1-800-621-3362 (TTY: 1-800-462-7585) or for 711 or Video Relay Service call 1-800-621-3362. For more information, see chapter 2 of this outline.

Eligibility

You can apply for FEMA assistance if you meet the eligibility requirements of being a “noncitizen national” or a “qualified alien,” and if you meet the other FEMA eligibility requirements. “Qualified aliens” are:

- Lawful permanent residents (LPRs or “green card” holders),
- Applicants who have been granted asylum,
- Individuals who have been admitted as a refugee,
- Individuals who have been granted humanitarian parole for at least one year,
- Individuals whose deportation have been withheld,
- Individuals granted conditional entry (per law in effect before April 1, 1980),
- Individuals who were a Cuban and Haitian entrant under the Refugee Education Assistance Act of 1980,
- Aliens in the U.S. who have been abused or subject to battery or extreme cruelty by a spouse or other family/household member, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided, or
- Aliens in the U.S., who have been victims of a severe form of human trafficking with an approved or pending petition, or aliens whose children have been battered or subjected to extreme cruelty and alien children whose parent has been battered or subjected to extreme cruelty who fit certain criteria with an approved or pending petition.

If you are an ineligible parent or guardian with an eligible minor child, you can apply on behalf of your child if your child lives in the household and was born in the U.S. The application will require that you provide the child’s name, age, and social security number. Only one applicant per household is required. The applicant must sign a sworn statement called a “Declaration and Release Form,” stating that the applicant or eligible minor child is a qualified alien. ([www.disasterassistance.gov/sites/default/files/daip/Declaration and Release FEMA Form 009-0-3 \(Feb2021\).pdf](http://www.disasterassistance.gov/sites/default/files/daip/Declaration_and_Release_FEMA_Form_009-0-3_(Feb2021).pdf). This form expires in 2021.) The release authorizes FEMA to verify the immigration status of the applicant or minor child. If one household member is a minor child and eligible as a U.S. citizen or a qualified alien, all household members qualify for assistance regardless of the other household members’ immigration status.

As of November 2019, FEMA’s news releases and policy state that FEMA will not collect or review the immigration status of other members of the applicant’s household aside from the minor child. FEMA, *FACT SHEET: Citizenship Status and Eligibility for Disaster Assistance FAQ*, <https://www.fema.gov/news-release/2019/11/15/4466/fact-sheet-citizenship-status-and-eligibility-disaster-assistance-faq>(last updated

November 15, 2019); see also FEMA, *U.S. Citizens, 'Qualified Aliens, Non-Citizen Nationals' Should Register With FEMA for Disaster Help*, <https://www.fema.gov/news-release/2016/06/20/us-citizens-qualified-aliens-non-citizen-nationals-should-register-fema> (last updated Jan. 3, 2018).

Non-Eligibility

You are NOT eligible to receive FEMA assistance if you—

- Have only a nonimmigrant visa, such as work, student, or travel visa,
- Are receiving TPS,
- Are receiving DACA, or
- Are undocumented.

However, U.S. citizens and qualified aliens in the household ARE eligible for those benefits.

You are NOT eligible to receive FEMA cash assistance if—

- No single household member is eligible (though your household can still receive non-cash assistance through state and local programs, such as emergency food and shelter, crisis counseling, disaster legal services, and other short-term emergency assistance); or
- You are in the U.S. on a temporary tourist visa, student visa, work visa, or have a temporary resident card (note that lawful presence in the U.S. and a Social Security number alone will NOT make you eligible for FEMA cash assistance; you must also meet all other FEMA eligibility requirements).

Required Documentation

In order to apply for FEMA aid, you will need to provide your—

- Social Security number,
- Current and pre-disaster address,
- Telephone number,
- Insurance and income information for your household,
- A description of losses caused by the disaster, and
- A bank routing and account number (if you want direct deposit into your bank account).

If you need immediate assistance during a natural disaster or are seeking more information about FEMA or other programs, you can go to a FEMA Disaster Recovery Center (DRC). You can search for a disaster recovery center at <https://egateway.fema.gov/ESF6/DRCLocator>. You can also text “DRC” and a zip code to 43362 to find your nearest DRC or call 1-800-621-3362 (TTY: 1-800-462-7585). Standard message and data rates apply. For individuals who use 711 or Video Relay Service call 1-800-621-3362. Operators are multilingual and calls are answered seven days a week from 7 a.m. to 10 p.m. CDT.

Cash Assistance

FEMA cash assistance is available through the Assistance to Individuals and Households Program (IHP), which provides money for necessary expenses that cannot be met through other needs. Some needs include

medical and dental expenses, moving and storage expenses, as well as childcare. The standard FEMA registration period is 60 days after the date that the President declares a disaster in your area. You can apply in person at a DRC, online at <https://www.disasterassistance.gov/get-assistance/forms-of-assistance/4471>, or via the smartphone app at www.fema.gov/mobile-app. Please remember to read the “public charge” section if you are seeking cash assistance.

Housing Assistance

FEMA also provides housing assistance through IHP, such as rental assistance, temporary lodging reimbursement, and home repair/replacement assistance. For greater detail on FEMA in general, see chapter 2 of this outline.

Unemployment Assistance

Qualified aliens may apply for DUA through FEMA. You must apply for this program within 30 days of the date of announcement of availability for DUA. 30 days is the standard deadline, but under extenuating circumstances unique to the disaster, the U.S. Department of Labor may extend the deadline. Survivors should consult with their local unemployment or workforce agency to confirm deadlines for applying. You also must not have declined an offer of employment in a suitable position. For more information, see [/www.fema.gov/media-library-data/152898425495549515ab3f8eeca0627f777a8abe4347a/DisasterUnemploymentAssistance.pdf](http://www.fema.gov/media-library-data/152898425495549515ab3f8eeca0627f777a8abe4347a/DisasterUnemploymentAssistance.pdf).

Q. 15-2 Will accepting FEMA benefits affect my immigration status or my application to become a legal permanent resident? What are the consequences of sharing the identity of my family members and myself with FEMA or other states agencies that distribute FEMA benefits?

Under current U.S. Citizenship and Immigration Services (USCIS) guidance, acceptance of emergency disaster relief is not considered public cash assistance that would cause you or your household members to become ineligible for lawful permanent residence (a green card) or a visa based on being a “public charge.” For more information, see www.uscis.gov/news/fact-sheets/public-charge-fact-sheet (Last updated February 27, 2020).

On February 24, 2020, the U.S. Department of Homeland Security (DHS) and the U.S. Citizenship and Immigration Services (USCIS) implemented the Final Rule on Public Charge Ground of Inadmissibility, which defines “public charge” as an alien who has received one or more public benefits for more than 12 months, in total, within any 36-month period. The rule defines “public benefits” to include any cash benefits for income maintenance, Supplemental Security Income, Temporary Assistance to Needy Families, Supplemental Nutrition Assistance Program, most forms of Medicaid and certain housing programs. For up to date information on the status of public charge regulations, see <https://protectingimmigrantfamilies.org/resources/>; and <https://www.ilrc.org/public-charge>.

Q. 15-3 I am undocumented. Is it safe for me to seek assistance from emergency shelters, food banks, or other nonprofit organizations?

Local communities, the Red Cross, and other voluntary agencies manage most shelters. Although it varies from agency to agency, most agencies will not give private information to government agencies. For instance, the Red Cross does not ask individuals to show any form of identification to stay in their shelters. See www.redcross.org/content/dam/redcross/atg/Chapters/Division_5_-_Media/South_Florida/_m71440178_Statement_on_Impartiality.pdf. Similarly, many local food banks and other nonprofit-run charities do not ask for identification or require a person to prove immigration

status. While some agencies do ask for identification and proof of address, they are generally collecting this information for internal purposes only.

Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) enforcement of immigration laws come future disasters is subject to the political climate at the time. For example, during Hurricane Harvey in 2017, ICE and CBP did NOT conduct routine immigration enforcement at evacuation sites, shelters, or food banks, even though ICE did reserve the right to take action if confronted with a serious, criminal situation. During natural disasters, however, CBP and ICE are still charged with enforcing immigration laws, although agents may not be uniform in their enforcement. For instance, during Hurricane Harvey in 2017, CBP kept its checkpoints open despite Governor Abbott's declaration that the state would prioritize protecting individuals' safety over enforcing immigration laws. In Houston, there were CBP vehicles stationed outside of some shelters, which made immigrants fearful of going to shelters, even though there were no enforcement activities going on.

For more information about a particular shelter, food bank, or other voluntary agency, you may reach the Red Cross at 1-800-733-2767 or visit www.redcross.org. You can also contact 2-1-1 for an additional referral. If you feel like you have been wrongly denied access to an emergency shelter due to your immigration status, you can fill out a complaint form at <https://intake.aclutx.org/>.

Q. 15-4 What can happen if I am driving and I am undocumented?

Driving without a license is a traffic offense and is sometimes penalized through a citation, in which you must later appear in court to pay a fine. However, officers have discretion and may arrest someone for driving without a license. For undocumented immigrants, it can also mean that you will be placed under detainer and transferred to ICE custody after local legal process ends, where you will face a removal process. If you must drive without a driver's license, make sure you have required liability insurance, maintain your vehicle's registration, and follow traffic laws.

Under a Texas law passed in 2017 known as "SB4" (Senate Bill 4), local jurisdictions must cooperate with federal detainers and can no longer have policies prohibiting their officers from inquiring about a person's immigration status. If police ask you about your status or country of origin, you do not have to answer.

Q. 15-5 If I have a loved one in an immigration detention center, how can I find out if she or he is safe?

ICE has the responsibility of keeping individuals in its custody safe. During a storm or other disaster, ICE may transfer detainees from one facility to another for their safety. The fastest way to find someone in detention during a disaster is to call the detention facility. Be prepared to provide the loved one's basic information, such as name, alien registration number ("A-number," a nine-digit number assigned to anyone with an immigration case), country of birth, and birthdate. You can check the ICE online detainee locator (for adults only) at <https://locator.ice.gov/>, but be aware that it is not updated in real-time and may take days or weeks to be updated. You may want to call immigration legal services nonprofits in your area, as they may know whether certain facilities are being evacuated during or in advance of a storm. To locate pro bono immigration legal services providers in Texas, you can go to the website of the Executive Office for Immigration Review <https://www.justice.gov/eoir/file/ProBonoTX/download>

Q. 15-6 What do I do if I missed an immigration court hearing, an appointment with an immigration official, or a biometrics appointment? How do I know if my upcoming appointment or hearing will still take place?

During a storm or other natural disaster, it may be dangerous or impossible to keep USCIS appointments or to attend immigration court hearings. In an emergency situation, these agencies may themselves have to shut down. You should not put your personal safety at risk during a disaster or its aftermath. In the event the court or agency closes due to a natural disaster, your hearing or appointment will be rescheduled.

Immigration Court (Executive Office for Immigration Review (EOIR))

EOIR offers proceeding information, including hearing dates, immigration judge decisions, and more through an automated hotline that you can reach by calling 1-800-898-7180. You will need to provide your “A-number” to get information about your case. In addition, starting on February 25, 2020, you can also check the status of your case through this on-line portal of EOIR: <https://portal.eoir.justice.gov/>

However, the EOIR hotline may not be updated during an emergency. In such a situation, you can find the most up-to-date information about court closures at https://twitter.com/DOJ_EOIR. If the court closes on the date you were set to have a hearing, the court will automatically reschedule your hearing date, and you should receive a hearing notice by mail. For this reason, among others, it is important to update the court with your most recent address if you have moved (see [Q. 15-10](#) for information on how to update your mailing address with the court).

If the immigration court is open and you are unable to make your hearing date because it is not safe for you to do so (for instance, if you are flooded in and cannot leave your home), you will be subject to a removal order. If you miss any immigration court hearing, you could be ordered removed. However, during a time of natural disaster or emergency, the court may be more flexible and reschedule your hearing. You should try to call the local immigration court and speak with your judge’s clerk to let them know that you cannot make it to the hearing; however, this may not successfully stop the court from entering an order of removal. For contact information about immigration courts, visit <https://www.justice.gov/eoir/eoir-immigration-court-listing#TX>. If the court does enter an order of removal, you should reopen your case with evidence that you were unable to make it to the courthouse. For example, if safe to do so, take photographs of flooded streets as evidence that you could not physically leave your home. Contact a legal immigration services nonprofit near you for assistance on filing a motion to reopen your case.

U.S. Citizenship and Immigrant Services (USCIS)

You can get information on USCIS office closures by calling the USCIS Contact Center at 1-800-375-5283 (TTY 800-767-1833) or by visiting www.uscis.gov/about-us/uscis-office-closings.

If the USCIS office is closed on the date of your appointment, it will reschedule you for a new date and time. A notice should be sent out to you by mail, so it is very important that you update USCIS with your most recent address if you move after the storm. (See [Q. 15-10](#).)

If the USCIS office is open, but you are unable to attend your appointment due to a natural disaster or its aftermath, you should call USCIS Contact Center at 1-800-375-5283 (TTY 800-767-1833) and let them know you will miss your appointment due to a natural disaster. For more information, visit www.uscis.gov/news/alerts/immigration-help-available-those-affected-natural-disasters.

If you missed your biometrics appointment or would like to know if the biometrics office is open, you can call the USCIS Contact Center for assistance: 1-800-375-5283 (TTY 800-767-1833).

Immigration and Customs Enforcement (ICE)

If you missed a scheduled appointment or check-in with ICE, call 1-866-347-2423 or contact your case manager, if you have their direct contact information.

Q. 15-7 I have lost my documents. How can I obtain my documents?

There are many types of important government documents, from identity documents to court paperwork. Different agencies are responsible for issuing originals and copies of documentation, both at the federal and state level. Below you can find information for obtaining documents from Texas, the U.S. federal government, foreign governments, USCIS, and the Immigration Court (EOIR).

U.S. Citizenship and Immigration Services (USCIS)

USCIS will reissue certain documents at a cost. However, if you lost documents because of a disaster, and because of that disaster are unable to pay the form fees, you may request a fee waiver (see below) along with the appropriate form. Common forms are downloadable from the USCIS website (see list below), or can be mailed to you if you call 1-800-870-3676 and request that service.

- Lawful Permanent Residence Card (“Green Card”). Form I-90: www.uscis.gov/i-90.
- Arrival/Departure Record I-94. Form I-102: www.uscis.gov/i-102.
- Employment Authorization. Form I-765: www.uscis.gov/i-765.
- Naturalization/Citizenship Certificate. Form N-565: www.uscis.gov/n-565.
- Fee Waiver. Form I-912: www.uscis.gov/i-912. Be sure to include evidence of the natural disaster’s effect on your loss of documentation.
- For a full list of available USCIS forms, visit www.uscis.gov/forms

To obtain a copy of your immigration record containing copies of applications you have submitted, you must make a request using the online Freedom of Information Act (FOIA) system or submit a Form G-639, in writing, to the USCIS National Records Center (address below) or by email to uscis.foia@uscis.dhs.gov or by fax to 816-350-5785. For more information on what to include with your FOIA request, call the USCIS Contact Center at 1-800-375-5283 (TTY 800-767-1833) or visit www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/how-file-foia-privacy-act-request/how-file-foiapa-request.

U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P.O. Box 648010
Lee’s Summit, MO 64064-8010

State of Texas–issued documents

To obtain copies of a Texas document, such as a birth certificate, marriage license, divorce decree, vehicle title, Texas driver’s license or identity card, visit the Texas Law Help website for detailed instructions on how to request a new document:

- English: www.texaslawhelp.org/article/replacing-lost-documents
- Spanish: <https://texaslawhelp.org/es/article/sustitucion-de-documentos-perdidos>

Federal government–issued documents

To obtain copies of U.S. government documents such as passports, Social Security cards, Medicaid, IRS documents, income tax returns, military service records, and more, visit the Texas Law Help website for detailed instructions on how to request the new documents:

- English: www.texaslawhelp.org/article/replacing-lost-documents
- Spanish: <https://texaslawhelp.org/es/article/sustitucion-de-documentos-perdidos>

Foreign government–issued documents

To obtain copies of foreign government-issued documents, contact your consulate.

Important note: If you are an asylum-seeker, contact an attorney. Do NOT contact your government. To hire a private attorney, you may contact the American Immigration Lawyers Association (AILA) by visiting <https://www.aila.org/>, or by calling the AILA at 202-507-7600. If you are in Houston, call the Houston Immigrant Rights Hotline at 1-833-468-4664 to be connected with a local nonprofit organization that may be able to help.

Immigration Court documents

You can obtain copies of immigration court documents in two ways: (1) by submitting a Freedom of Information Act (FOIA) request; or (2) by going to the immigration court where your case is pending.

To obtain the most complete copy of your immigration court case, you will need to submit a FOIA request, which may then take anywhere from three months up to a year to process. For details on how to submit a FOIA request to the immigration court, please visit www.justice.gov/eoir/foia-facts.

You may also view your file at the immigration court where your case is being heard; however, you may be able to make only a limited number of copies. To view your file, you must go to the immigration court where your case is being heard and fill out a request to view your file. You may not be allowed to see the file the same day and may be called on a later date to view the file (depending on the court’s policies). When you view the file, you are not permitted to take it with you, and you will not be able to make a copy of the entire record. You can find a list of immigration courts at www.justice.gov/eoir/eoir-immigration-court-listing.

Q. 15-8 What are my options if the disaster has affected my ability to file necessary immigration documents by a set deadline?

First, you should promptly consult with a nonprofit legal services provider or a private immigration attorney.

If you are seeking a benefit before USCIS, but you have fallen out of status due to a natural disaster, USCIS may choose to consider either a request for an extension or a change in status due to the disaster, if you can show how the request is directly connected to the disaster. Per USCIS, if you do not apply for the extension or change of status before your authorized period of admission expires, it may excuse the delay if it was due to extraordinary circumstances beyond your control. If you have failed to appear for a scheduled interview or have not timely submitted evidence in response to a notice or request, “you may show how the disrupting event affected your connection to USCIS and your ability to appear or submit documents as required.” USCIS, *Special Situations*, www.uscis.gov/humanitarian/special-situations (last updated Oct. 25, 2019).

Q. 15-9 What if my initial application for FEMA benefits is denied?

Erroneous denial based on immigration status is common. If you are denied, you may reapply. Local legal aid service providers may be able to assist you with your appeal.

- Texas RioGrande Disaster Legal Aid – 1-866-757-1570 (www.trla.org)
- Lone Star Legal Aid – 1-800-733-8394 (<https://lonestarlegal.blog/>)
- Legal Aid of Northwest Texas – 1-888-529-5277 (<https://internet.lanwt.org/en-us>)
- Houston Volunteer Lawyers – 1-713-228-0735 (www.makejusticehappen.org)

Q. 15-10 I have moved/I am temporarily displaced from my home. How do I change my address?

Depending on what type of immigration case you have, you may need to submit your change of address to one or more of the following agencies, including U.S. Citizenship and Immigration Services (USCIS), Immigration Court (Executive Office for Immigration Review, (EOIR)), the Board of Immigration Appeals (BIA), or Immigration and Customs Enforcement (ICE).

U.S. Citizenship and Immigration Services (USCIS)

If you have a pending application with USCIS, you must notify your immigration attorney if you are represented. You can update your address with USCIS by completing Form AR-11 and sending it by mail or online if you qualify. For more information, see <https://egov.uscis.gov/coa/displayCOAForm.do>. You can also update your address by calling the USCIS Contact Center at 1-888-375-5283 (TTY: 1-800-767-1833).

Immigration Court (Executive Office for Immigration Review (EOIR))

If your case is before the immigration court, you must submit a Form EOIR 33, Alien’s Change of Address Form/Immigration Court, to the specific court where your immigration case is being heard. If you have an attorney, your attorney should help you file a change of address form.

To send a change of address form, print the form for the immigration court where your case is being heard from www.justice.gov/eoir/form-eoir-33-eoir-immigration-court-listing, complete it, and mail it to the address on the form. You must also make a copy of the form and send it to the ICE Office of Chief Counsel. You can find the office nearest you at www.ice.gov/contact/legal. It is also advisable to keep a copy for yourself.

If you have moved to a different jurisdiction, you will need to file a motion to change venue so that you can go to the court nearest you; otherwise, you will have to report to the court where you were previously living. Remember, if you miss any immigration court hearing, you will be ordered removed. If you missed a court hearing because of a natural disaster, see [Q. 15-6](#).

Board of Immigration Appeals (BIA)

If you have an appeal pending with the Board of Immigration Appeal and need to change your address, notify your attorney. You must complete and file Form EOIR 33/BIA in person or by mail and give it to the immigration court where your appeal is pending. No online change of address is available for the BIA.

You can get Form EOIR 33/BIA from the Department of Justice website at www.justice.gov/sites/default/files/pages/attachments/2015/07/24/eoir33bia.pdf.

Immigration and Customs Enforcement (ICE)

To change your address with Immigration and Customs Enforcement (ICE), you can call 1-866-347-2423 (TTY: 1-802-872-6196).

Q. 15-11 I am a foreign student whose visa is dependent on my enrollment, and the disaster has affected my ability to pay my studies. What are my options?

Unfortunately, you do not qualify for FEMA cash assistance. However, you might qualify for a Student Employment Authorization. If a disaster has affected your ability to support yourself, you may need to work off-campus. The disaster may occur in the U.S. and prevent you from working on-campus, or the disaster may occur overseas and affect your economic support. If you can show that you are from an affected country and the Designated School Official (DSO) has recommended you for employment, you may be eligible to file Form I-765, Application for Employment Authorization. For more information, see www.uscis.gov/humanitarian/special-situations.

Q. 15-12 I have an ankle monitor, and I cannot leave my address. I cannot keep my ankle monitor charged. What do I do?

First, call your docket officer or case manager. When you call, state your name and “A-number” to check in and make sure that you are not receiving a violation. If you do not receive a response initially, make sure to leave a voicemail and check in daily. If you have an attorney, call them and let them know of the situation.

Second, go to the nearest ICE Field Office or ISAP/BI-Incorporated office, report what happened, and get new equipment. If you cannot go because of transportation issues or flooding, then wait and make sure that you reported and recorded the issue via telephone. Then, when safely possible, go to one of the offices listed at <https://www.ice.gov/contact/ero>.

Q. 15-13 Somebody stole my wages. How can I recover my wages if I am undocumented? If I call the police, will I be deported?

All workers, regardless of their immigration status, have rights under both state and federal law, and most of these protections are enforced without regard to immigration status. However, we recommend you consult with a legal aid organization, worker center, or a private attorney before contacting any government body. For more information, visit <https://texaslawhelp.org/article/employment-rights-undocumented-workers>.

Some worker centers across the state are:

- **Equal Justice Center** with offices in Austin, Dallas, San Antonio, and Houston: <http://www.equaljusticecenter.org/>
- **Workers Defense Project** has offices in Austin, Dallas, and Houston: <http://www.workersdefense.org/>
- **Fe y Justicia Worker Center** is based in Houston: <http://houstonworkers.org/>
- **Fuerza Del Valle** operates in the Rio Grande Valley: <https://www.facebook.com/fuerzadelvalle/>.

You are also able to report stolen wages without calling the police. The Texas Payday Law, administered by the Texas Workforce Commission (TWC) protects both documented and undocumented workers whose wages are stolen by their employers. To file a claim for stolen wages, you must file your claim within 180 days after the wages were due. For more information, and for access to forms for filing a claim, go to www.twc.state.tx.us/jobseekers/texas-payday-law#howToClaimUnpaidWages.

If you would like to call the police, be aware that under a Texas law passed in 2017 known as “SB4” (Senate Bill 4), local jurisdictions can no longer have policies prohibiting their officers from inquiring about a person’s immigration status. If police ask you about your status or country of origin, you do not have to answer.

***(FEMA has a Q&A for Undocumented Immigrants regarding FEMA Assistance that can be incorporated or referred to in this section at www.fema.gov/news-release/2004/06/17/questions-and-answers-undocumented-immigrants-regarding-fema-assistance)

16.0 COMMUNITY ORGANIZATIONS/SMALL BUSINESSES

16.1 Overview

Disasters can be the cause of both physical and economic damage to microenterprises and nonprofits, resulting in both unexpected disaster-related damage repair costs and revenue loss.

Community-based nonprofit organizations often require assistance in two different arenas: as an organization engaging in disaster recovery for itself and as an organization engaging in disaster relief activities for other disaster victims in the community. During and after a disaster, organizations provide food, cash assistance, social services and information. They may even decide to create new programs or new entities to respond to unique needs posed by disasters or assist underserved or marginalized communities with additional and specialized needs.

16.2 Most Common Issues/Questions

A. Where Can I Get Help?

1. Federal Emergency Management Agency (FEMA): Generally, following a federal disaster declaration, for-profit businesses and nonprofit organizations in the affected areas can begin the disaster application process by registering online with FEMA or calling the FEMA telephone hotline. *Because short deadlines apply to both FEMA and the Small Business Association (SBA), it is important and necessary to contact them as quickly as possible.*

Public Assistance Program - Nonprofit organizations within a federally declared disaster zone may qualify for FEMA grants and low interest loans through the SBA to help them repair damages to their facilities. A nonprofit must apply for both grants and loans within a short deadline, usually 30-60 days following the federal disaster declaration. Any nonprofit damaged by a disaster should register immediately with FEMA and apply for an SBA loan. Grants are available for only certain types of nonprofits as set out in more detail below.

There is specific guidance from FEMA regarding what types of emergency protective measures nonprofit organizations are taking to respond to the COVID-19 pandemic that may be eligible for funding under the Public Assistance Program. These are going to include measures to manage, control, and reduce immediate threats to public health and safety, emergency medical care, and medical sheltering.

https://www.usfa.fema.gov/coronavirus/funding/public_assistance_grants.html

Disaster Assistance Grants - Two types of nonprofit organizations are eligible for disaster assistance grants: (1) Critical service providers (including educational, utility, emergency, or medical services), and (2) essential service providers¹ open to the general public. *Eligible nonprofits providing essential services of a governmental nature*, may qualify for grants to repair or replace eligible real property losses. For example, if a nonprofit leases the building, it can qualify for grants if it is legally responsible for disaster-related repairs. Here, the (pre-disaster) lease must clearly state that the nonprofit is responsible for repairing major damage, rather than just maintenance or minor repairs.

¹ Examples of essential services are: museums, zoos, performing arts facilities, some community centers, community arts centers, libraries, homeless shelters, senior citizen centers, and health and safety services of a governmental nature, including, for example: low-income housing, substance abuse treatment centers, residences and other facilities offering programs for battered spouses, animal control facilities directly related to public health and safety, facilities offering food programs for the needy, childcare centers, and daycare centers for people with special needs (Alzheimer's, autism, muscular dystrophy, etc.)

Both critical and essential services nonprofits must register with FEMA and submit a request for assistance within 30 days of the disaster declaration. Tight timelines and information reporting make it critical for nonprofits to understand and calendar their obligations to report information and follow up on applications. In general, most nonprofits will need to apply for an SBA loan first in order to apply for a grant. For example, essential service providers must apply for a low-interest disaster loan from the SBA at the same time they apply for the public assistance grants for permanent work assistance. However, nonprofits providing “critical services” such as sewer or wastewater services, education, fire and rescue, or nursing home services, can apply directly for grants without having to apply for a loan.

In order to obtain funding, the facility or structure damaged or destroyed by the disaster must have used over 50% of its space for eligible services. Note that space dedicated to or primarily used for religious, political, athletic, recreational, or vocational purposes, is not eligible for grant assistance. Some spaces may be used for both for eligible and ineligible purposes, e.g. a library with adjacent performing arts space. Grant assistance, if approved, is proportional to the percentage of space used for eligible services. Nevertheless, as a condition of receiving grant assistance, the organization must repair the entire building.

Eligible work is classified into the following categories: “Emergency Work,” such as debris removal and “Permanent Work,” such as replacement or repair of buildings and facilities (this can include work to mitigate or prevent future disaster damage).

2. Department of Agriculture: Farmers and ranchers with disaster-related losses may be eligible for assistance from the US Department of Agriculture, <https://www.fsa.usda.gov/programs-and-services/disaster-assistance-program/index>. This assistance includes grants and loans, and varies by type of disaster (flood, drought, fire) as well as category of damage (crops, beehives, livestock, etc.).

3. Small Business Administration: For-profit and nonprofit organizations affected by a federally-declared disaster, may be eligible for disaster assistance loans from the Small Business Administration (SBA). The maximum combined loan amount available is \$2 million. There are two types of loans: (1) economic injury, which provides working capital, and (2) physical disaster, which may be used to repair or replace property. For information and applications: <https://www.sba.gov/funding-programs/disaster-assistance>.

The Economic Injury Disaster Loan (EIDL) is an SBA loan available in areas with a federal disaster declaration. These loan applications are made directly through the SBA’s website. These loans are available to nonprofits as well as small businesses, including individuals operating as a sole proprietor (with or without employees) that have suffered substantial economic injury due to the disaster. This loan can be used for any operational expenses, including payroll, paid sick leave, cost of materials, rent or mortgage, or other obligations that cannot be met due to disaster

Physical Damage Disaster Loan is an SBA loan available in areas with a federal disaster declaration. These loan applications are made directly through the SBA’s website. These loans are available to nonprofits as well as small businesses, who have suffered physical losses in a disaster, such as real property repairs.

SBA Express Bridge Loan: Small businesses who have an existing relationship with an SBA Express Lender to access up to \$25,000 quickly as a term loan on its own, or to provide liquidity while waiting on approval for an Economic Injury Disaster Loan.

SBA Loan Abatement: Existing SBA loan payments are automatically abated for a pre-determined period for businesses in the declared disaster zones. Organizations will get a notice directly from the lender. If

your organization is in a county adjacent to a declared disaster zone, you can apply for an abatement on an existing SBA loan.

B. What About My Business or Organization's Commercial Lease?

Physical Damage

Notify the landlord as soon as possible *in writing* of damage to the premises, and if operations were shut down as a result of disaster. Review the lease -particularly the provisions relating to business interruption, duties to remain open, repair clauses, termination clauses, and the like to determine whether the lease may be terminated, rent abated or deferred, or how the responsibility for repairs is apportioned between the parties. If the lease does not provide for temporary rent reduction, try to negotiate one with the landlord. This contractual relief is often dependent on the type and extent of damage to the property that was caused by the disaster.

Damage to the organization or business property located inside the leased premises is typically not covered by the property owner's insurance. As such it is important for the business or nonprofit to contact its insurance carrier to promptly report those types of losses and damages. Photograph or videotape the damage, as well as damage to any records, inventory, equipment, and any other loss.

Inability to Pay Rent:

If the business or organization is having difficulty making timely and complete rent payments for the space, it is imperative that open lines of communication are established with the landlord. It may be possible to reach an agreement about rent deferral or abatement, or a payment plan for back rent. Be sure to get any additional agreement in writing. If the organization wants to remain in that location, extending the lease may be an option to extend the time period in which to repay any rent deferred during the disaster.

Commercial tenancies are subject to lock-out for nonpayment of rent under Chapter 93 of the Texas Property Code. This is not a judicial process, rather it is a landlord self-help remedy allowing the landlord to lock-out a commercial tenant who is behind in the rent. This means that eviction moratoriums (particularly if drafted to prevent or delay the judicial process of residential evictions during the pendency of the disaster) may not apply to commercial lock outs under Chapter 93.

C. What If the Disaster Has Affected Existing Contracts?

A good practice is to maintain copies of all fully executed, current contracts in a location (physical or digital) that will be accessible in the event of a disaster. This makes it easier to for the business or nonprofit to review its contracts in the event of a dispute over contractual obligations; or conduct a proactive review of contractual obligations after a disaster has affected the operations of the small business or nonprofit organization.

The organization may have ongoing business obligations to vendors, suppliers, and clients even though the organization's operations are interrupted. It is important to assess the business or organization's ability to comply with existing obligations along with any potential avenues for relief contained in the terms of the relevant contract.

Nonprofit organizations further need to review grant contracts, particularly if the disaster has interrupted operations to an extent that the nonprofit may not be able to fulfill deliverables or continue with the scope of the grant. Grant contracts may also contain a list of events or conditions that trigger a duty to notify the

grantor. When a nonprofit organization is having any difficulty in resuming or maintaining operations as a result of the disaster, communication with the grantor may be helpful in ensuring that the nonprofit remains in compliance with grant requirements.

A review of force majeure clauses, termination clauses, penalty clauses and termination clauses are all useful. Any contract amendments agreed upon by the business or nonprofit and the other party to any contract need to be memorialized as a written amendment to those contracts.

D. Is There Any Federal Tax Relief Available?

Business owners who suffer damage or loss to their property or business due to a natural disaster are eligible for special federal income tax provisions. These provisions fall into two categories: casualty loss deductions and deferral of casualty gains. The IRS has workbooks for businesses ([Publication 584-B, Business Casualty, Disaster, and Theft Loss Workbook](#)) to help compile a list of damaged or lost business equipment and prove the market value of items for insurance and casualty loss claims. More IRS information can be found at <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Disaster-Assistance-and-Emergency-Relief-for-Individuals-and-Businesses-1>.

E. What About Unemployment?

Federal Disaster Unemployment Assistance (DUA) is a federal program that provides financial help to those who become unemployed as a direct result of a *federally declared disaster*. Self-employed people, including small business owners, owners of farms and ranches, and others not generally eligible for unemployment insurance, are eligible for Disaster Unemployment Assistance.

Applications are submitted through the Texas Workforce Commission. *The application period can be short, it is important to apply as soon as possible.* DUA is available for up to 26 weeks. Individuals have the right to appeal the denial of benefits. An individual must prove self-employment by providing tax documents, business documents, and other proof of the existence of the business, such as a lease or utility statements or business licenses.

Disaster Unemployment benefits count as taxable income. Disaster Unemployment benefits are not available for the COVID-19 Pandemic Disaster – please refer to the COVID-19 Supplement information on Pandemic Unemployment Insurance.

16.3501(c)(3) Nonprofits Engaged in Disaster Relief

Nonprofit organizations often provide assistance to disaster victims at the same time they are struggling to recover from the disaster themselves. Particularly if the disaster relief operation is not the type of charitable activity that the nonprofit normally engages in, the nonprofit must be careful to structure its disaster relief services in such a way that they remain in compliance with the requirements imposed by their 501(c)(3) status. See <https://www.irs.gov/pub/irs-pdf/p3833.pdf>

Purpose Clause

Nonprofits that amend the purposes clause of their certificate of incorporation (to provide additional disaster relief programs that are not within the current mission and purposes of the nonprofit) should notify the IRS promptly. The IRS may review changes to the corporate purposes of a 501(c)(3) organization to ensure that the changes do not affect the corporation's tax-exempt status and may revoke 501(c)(3) status if it deems the new purposes to be impermissible.

Charitable Class

Disasters can affect communities in unpredictable ways and nonprofits must decide how to define the charitable class eligible for disaster assistance. Nonprofits must serve public, not private interests. This means that the parameters of the charitable class – group or individuals identified to receive assistance (at-risk children, first-responders, homeless veterans, etc.) must be broadly defined so that providing assistance to the class is a benefit to the community. This is intended to avoid narrowly defined charitable classes designed to provide benefits to specific individuals (such as a specific person or family).

Restricted Donations

Nonprofit organizations can accept donations earmarked for specific purposes, such as to provide food aid to the victims of a specific disaster. When nonprofits accept donations earmarked for particular purposes, it must take steps to account for and demonstrate that those donations were used in conformity with the conditions attached to the donated funds. So long as the purpose of the restricted donation or charitable class identified for assistance is broad enough to constitute a community benefit, the nonprofit will avoid the problem of the private interest. Also problematic is the earmarking of donations for specific disaster victims.

Personal donations to benefit pre-selected individuals are not “charitable” gifts because they benefit private individuals, and 501(c)(3) organizations should decline such donations and encourage the donation be made to support programs to help disaster victims more generally.

The “Needy or Distressed” Test

Charitable aid is defined as relief for the poor and underprivileged as well as the distressed. This does allow 501(c)(3) nonprofits to assist ‘distressed’ persons who are suffering as a result of the disaster, regardless of their economic circumstances. This does not mean that charitable funds can be distributed to individuals merely because they are victims of a disaster.

Distribution of assistance must be based on an objective evaluation of the victim’s needs at the time the grant is made. For example, emergency assistance (blankets or a hot meal at an evacuation shelter) can be distributed without screening for financial need. Persons needing these services are distressed whatever their economic circumstances. However, a financial assessment would be needed before providing aid such as disaster-related cash assistance for housing.

Staffing Issues

Ramping up operations quickly in response to a disaster often poses staffing issues. Nonprofits that seek to expand their staff to provide disaster relief services have a range of options.

One is to hire temporary workers, who are employed by a temporary agency, rather than by the organization itself. Another is to hire part-time or full-time employees directly. A third option is to hire independent contractors (nonprofits must be careful to avoid misclassifying employees as independent contractors). This includes employees who may work only a few hours a day or according to a varying or even an erratic schedule. Misclassification penalties can be steep and may include paying back the employment taxes that should have been paid with respect to the misclassified individual.

<https://www.irs.gov/charities-non-profits/exempt-organizations-independent-contractors-vs-employees>

Volunteers often assist nonprofits in providing disaster assistance to the victims of the disaster. Nonprofits may be tempted to reward or compensate those who work tirelessly to serve victims of the disaster, for example by offering stipends or other benefits. While reimbursing volunteers for some out-of-pocket expenses is allowable, compensating volunteers for their time can inadvertently create an employment relationship, with all its attendant responsibilities. It is critical that nonprofit organizations considering compensation for volunteers to explore these issues to avoid any employment law issues.

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

Charitable Aid to Businesses

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

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

16.4 COVID-19 Pandemic Supplement

The COVID-19 pandemic is an unusual disaster – the world has not seen a true world-wide pandemic since the 1918 flu pandemic. The existing disaster relief programs have been supplemented and expanded by COVID-19 specific statutes such as the CARES Act.

This disaster has been unusual in the breadth and depth of the economic damage to small businesses and nonprofit organizations and the unusual nature of what could be categorized as physical damages in the potential viral contamination of the premises, and ongoing threats of illness to employees, clients, and visitors to the business premises.

A. Paycheck Protection Program

<https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>

The CARES Act establishes the Paycheck Protection Program, an expansion of the SBA's 7(a) loan program. PPP loans are distributed on a first-come, first-served, with limited funding.² The maximum loan amount is \$10M, with a 1% Interest rate and 2 years for repayment. The first payment is due 6 months after date of disbursement; BUT interest will accrue during this 6-month time period. This program ends June 30, 2020.

Loan proceeds may only be used for payroll (including paid leave), employer-provided health insurance, interest on mortgage obligations, rent, utilities, and interest on other debt incurred before February 15, 2020. The loan cannot be used to compensate individuals in excess of \$100,000, employees with a principal place of residence outside the United States, or leave wages already covered by the Families First Coronavirus Response Act.

The PPP has attracted attention and excitement because of the potential for loan forgiveness of up to the full principal amount, if at least 75% of the loan is used for payroll costs, and if the number of employees and salaries do not decline.³ Borrowers are eligible to have loan amounts forgiven to the extent that they are used to pay eligible expenses in the proportion and time frame set out by regulation. Forgiven amounts are not counted as gross income for federal income tax purposes, however guidance suggests that expenses paid by forgiven PPP funds that would normally be tax-deductible business expenses will not be deductible. Careful accounting on how PPP funds are expended is recommended for all organizations utilizing PPP funds.

Loan forgiveness is not automatic; a request will need to be submitted to the lender. That application will have to include the following: documentation of payroll and number of employees on payroll, payroll tax filings/self-employment filings, documents verifying payments on covered mortgage or lease obligations, and covered utility payments; and any other documentation SBA determines is necessary.

B. Families First Coronavirus Relief Act – Paid Sick Leave/Paid Family Medical Leave

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Paid Leave under the FFCRA is not available for people who cannot work or telework because of nonqualifying reasons (i.e., there is no work, business is closed down). Paid leave under the FFCRA will

² As of May 2020, the funding for this program is exhausted.

³ As of May 2020, statutory changes regarding loan forgiveness parameters are being discussed in Congress, and regulatory clarification is likely. Details of the process for requesting forgiveness for self-employed persons with no employees have not yet been clearly communicated by Treasury or the SBA.

only be available if there is work or telework available that the person cannot perform because of one of the reasons enumerated in the FFCRA.⁴

The FFCRA applies to employers with fewer than 500 employees, and sets out two types of leave in the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA). These are temporary leave provisions; only days that may be taken into account in determining whether leave is qualified as FFCRA paid leave are days occurring during the period beginning on April 1, 2020 and ending on December 31, 2020.

Emergency Paid Sick Leave Act (EPSLA) - Employees are entitled to paid leave at up to 80 hours over 2 weeks at regular pay or minimum wage, whichever is higher (capped at \$511 per day) for following reasons:

At 100% pay: if employee cannot work or telework because he or she is:

- 1.) subject to federal, state, or local quarantine or isolation order related to COVID-19,
- 2.) advised by health-care provider to self-quarantine related to COVID-19,
- 3.) experiencing COVID-19 symptoms and is seeking a medical diagnosis.

At 67% pay (capped at \$200 a day): if employee cannot work or telework because he or she:

- 1.) is caring for an individual subject to a federal, state, or local quarantine or isolation order related to COVID-19, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19,
- 2.) is caring for his or her child whose school or child-care provider is unavailable due to COVID-19 precautions, OR
- 3.) is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services (DHHS)..

Emergency Family and Medical Leave Expansion Act (EFMLEA) - Employees are entitled to paid leave for up to 12 work weeks, with the initial 2 weeks unpaid, and remaining 10 weeks at paid at 67% (capped at \$200 a day) if the employee cannot work or telework because he or she is caring for his or her child whose school or childcare provider is unavailable due to COVID-19.⁵

An exemption is available for employers of less than 50 employees for EFMLEA only if paid leave would jeopardize business viability:

- Because employee leave would result in expenses and financial obligations exceeding available business revenues and cause business to cease operating at minimal capacity,
- Because employee absence entails substantial risk to financial health or operational capabilities of the business because of his or her specialized skills, knowledge of the business or responsibilities, OR
- Because of insufficient employees able, willing, and qualified at time and place needed to perform labor or services (needed for business to operate at minimal capacity) provided by employee.

Tax Credits - Employers are entitled to fully refundable tax credits equal to the paid leave, plus the employer's share of Medicare taxes on those wages and qualified health plan expenses. The federal employment taxes that are available for retention include federal income taxes withheld from employees, the employees' share of social security and Medicare taxes, and the employer's share of social security and Medicare taxes with respect to all employees.

⁴ Employers may exclude employees who are either health care providers, or emergency responders (these are broadly defined).

⁵ Employee must have been employed for at least 30 days.

If the federal employment taxes yet to be deposited are not sufficient to cover the cost of qualified leave wages, plus the allocable qualified health plan expenses and the amount of the employer's share of Medicare tax imposed on those wages, the employer will be able file a request for an advance payment from the IRS. <https://www.irs.gov/newsroom/covid-19-related-tax-credits-special-issues-for-employees-and-additional-questions-faqs#specific>

Recordkeeping - Employers must request (from the employee) and keep records and documentation related to and supporting each employee's leave to substantiate the claim for the credits.

Employee must provide his or her employer documentation in support of paid sick leave or expanded family and medical leave, including (as applicable):

- the employee's name and the date(s) for which leave is requested;
- the COVID-19 qualifying reason for leave;

AND

- a statement representing that the employee is unable to work or telework because of the COVID-19 qualifying reason:
 - the name of the government entity that issued the quarantine/isolation order to the employee
 - the name of the healthcare provider who advised him or her to self-quarantine for COVID-19 related reasons

OR

- the name of the child being cared for and
 - the name of the school, place of care, or childcare provider that closed or became unavailable due to COVID-19 reasons, and
 - statement representing that no other suitable person is available to care for the child during the period of requested leave

Employers should keep this documentation for four years, regardless of whether leave was granted or denied. If an employee provided oral statements to support his or her request for paid sick leave or expanded family and medical leave, then document and retain that information for four years.

Self-Employed Persons - Refundable tax credits are available for self-employed workers who take COVID-19 leave. This means that self-employed workers can get money back if their tax credit is bigger than the tax owed.

Eligible self-employed workers can get a tax credit of up to 2 weeks of their full average pay (capped at \$511 per day) if unable to work for the following reasons:

- Under a quarantine or isolation order related to COVID-19;
- Have been advised by a health care provider to self-quarantine because of concerns related to COVID-19; or
- Having symptoms of COVID-19 and are seeking a diagnosis.

Eligible self-employed workers can get a tax credit of up to 67% of their average pay for 10 weeks (capped at \$200 a day) if unable to work for the following reasons:

- Caring for someone who is under a quarantine order or has been advised to quarantine by a health care provider;
- Caring for your child whose school is closed or childcare provider is unavailable; or
- Experiencing any other substantially similar condition related to COVID-19 as defined by law.

Keep financial records demonstrating self-employment and earnings (Average pay = net self-employment earnings/260). Keep records verifying eligibility for leave (i.e., COVID-19 diagnosis, isolation order, school closure order, etc.). Keep these records for 4 years. *See Questions #60-66 at the following link:* <https://www.irs.gov/newsroom/covid-19-related-tax-credits-special-issues-for-employees-and-additional-questions-faqs#specific>

C. Pandemic Unemployment Benefits

If an employee has been laid off or otherwise involuntarily separated from employment, he or she can apply for unemployment benefits. The amount of the benefit is generally based on the person's prior earnings. Texas pays a maximum of \$521 per week.

Pandemic relief legislation augmented both the time frame and the benefit amount, as well as the category of workers eligible for unemployment benefits. <https://www.twc.texas.gov/news/frequently-asked-questions-about-unemployment-insurance-benefits-related-covid-19>

Federal Pandemic Unemployment Compensation provides an additional \$600 per week in benefits, regardless of prior earnings for a time period of April 4 – July 25, 2020. With all emergency unemployment programs in effect, Texas workers can get up to 39 weeks of unemployment benefits.

Pandemic Emergency Unemployment Compensation provides benefits for workers who have already exhausted the normally available unemployment benefits, providing an additional 13 weeks of benefits.

Pandemic Unemployment Assistance makes many more workers affected by COVID-19 eligible for unemployment benefits, including small business owners, independent contractors, and gig workers. <https://www.twc.texas.gov/news/self-employed-texans-and-cares-act>. If you are a small business owner or independent contractor, gather documentation of your income because you will need to provide this documentation to the Texas Workforce Commission.

Applications should be submitted through the Texas Workforce Commission website.

Delay of Payment of Employer Payroll Taxes The deadline for filing Q1 2020 self-employment income taxes are extended by 90 days. The deadline for the Q2 2020 self-employment taxes are extended by one month; making both due on July 15. <https://www.irs.gov/faqs/estimated-tax/individuals/individuals-2>

The due date for depositing the employer's 6.2% SS FICA tax on employee wages for the period beginning on March 27, 2020 - December 31, 2020 is deferred. This amount must now be paid in two equal installments: the first due on December 31, 2021 and the second due on December 31, 2022.

Self-employed taxpayers can defer fifty percent of their Social Security self-employment tax obligation for the period from March 27, 2020 through December 31, 2020, with half of the deferred amount due by December 31, 2021 and the remaining half of the deferred amount due by December 31, 2022. <https://www.irs.gov/forms-pubs/impact-of-recent-covid-19-legislation-on-employment-taxes>

These deferral provisions do not apply to any employer that has had an SBA Paycheck Protection Program Loan forgiven, or to wages that have refundable tax credits claimed against them as set out below (no double-dipping).

Employee Retention Credits (part of the CARES Act) Eligible employers can take a refundable tax credit against the employer portion of certain FICA taxes on "qualified wages." The amount paid to each employee that will count as "qualified wages" is capped at \$10,000 per employee (paid between March

12, 2020 and January 1, 2021) for a maximum credit of \$5,000 per employee. <https://www.irs.gov/forms-pubs/impact-of-recent-covid-19-legislation-on-employment-taxes>

To qualify as an eligible employer for a calendar quarter:

- (1) the operation of the employer's trade or business must be fully or partially suspended during the quarter due to orders from a governmental authority limiting commerce, travel, or group meetings due to COVID-19, or
- (2) starting at Q1 2020, the employer's gross receipts are less than half of what they were for the corresponding quarter in 2019. Once gross receipts are more than 80% of what they were in the corresponding quarter in 2019, eligibility for the tax credit expires.

Note on Employee Retention Credits:

- An employer receiving an SBA Paycheck Protection Program Loan may *not* take this credit.
- Wages used to take the tax credit for the FFCRA family medical leave or sick leave do not count as Qualified Wages (no "double dip" for tax credits).

Self-employed persons are *not* eligible for this credit on their self-employment earnings.

17.0 WILLS AND ESTATES PLANNING

ESTATE PLANNING

17.1 Overview

Most people do not think about their estate planning documents until a situation arises where they might need them, but do not have them. Often, a health concern prompts a person to get their affairs in order. There are several estate planning documents that every person should have to ensure that their wishes are known in the case of illness, incapacity or death. Some examples of these documents are Durable Powers of Attorney, Medical Powers of Attorney, and Wills. Each of these is discussed below.

17.2 Durable Powers of Attorney

- a. A durable power of attorney allows the principal (the client) to designate an agent (the person who will hold the power of attorney) to act on the principal's behalf with respect to business and financial matters. A durable power of attorney generally allows the agent to act on the principal's behalf and is particularly useful if the principal becomes incapacitated. Chapter 751 of the Texas Estates Code contains the Texas Durable Power of Attorney Act, which contains the provisions governing durable powers of attorney, and contains a suggested form for the Statutory Durable Power of Attorney, found in Tex. Est. Code §§ 752.051 *et seq.*
- b. Generally, a durable power of attorney grants broad authority to the agent. *See, e.g.,* Tex. Est. Code §§ 751.031–751.034 *et seq.* Unless the principal expressly withholds powers from the agent in the financial power of attorney, the agent generally has the power to perform any act that the principal could perform, subject to certain limitations. *Id.* When authorized, an agent's acts generally have the same effect as if the principal performed them. Tex. Est. Code § 751.051.
- c. Effective September 1, 2017, amendments to the Texas Estates Code permit a principal to grant the agents powers beyond those provided for in the statutory form. *See* Tex. Est. Code § 752.052. Sometimes referred to as “hot” powers, these additional grants must appear in the durable power of attorney. “Hot” powers that can be granted include, among other things, the express authority to make gifts, the power to change rights of survivorship, and the power to change beneficiary designations. *Id.*
- d. Requirements of a Power of Attorney
 - i. *Length of Duration*

Section 751.0021 of the Texas Estates Code describes the requirements of a durable power of attorney. Durable powers of attorney generally come in two flavors: (1) those that expire upon the principal's disability or incapacity, and (2) those that become effective upon the principal's illness or incapacity. Section 751.0021 of the Texas Estates Code requires the power of attorney make this or a similar designation.
 - ii. *What does it mean to be disabled or incapacitated?*
 1. Under the Texas Estates Code, for purposes of a durable power of attorney, a person is disabled or incapacitated “if a physician certifies in writing at date later than the date the durable power of attorney is executed that, based on the

physician's medical examination of the person, the person is determined to be mentally incapable of managing the person's financial affairs." Tex. Est. Code § 751.0021.

2. For estate planning purposes, principals have two options: (i) they can have their durable power of attorney become effective immediately upon signing or (ii) they can have a "springing" durable power of attorney that will become effective upon their disability or incapacity. In practice, however, agents attempting to act under "springing" durable powers of attorney face additional hurdles. The agent will have to prove to the financial institution's satisfaction that the principal is, in fact, incapacitated. This process can be extremely difficult during an already difficult time.

iii. *Other General Requirements*

1. In addition to the designation regarding effectiveness upon disability or incapacity, a durable power of attorney must be:
 - (a) in writing,
 - (b) signed by the principal or by another in the principal's conscious presence at the principal's direction, and
 - (c) acknowledged before a notary by the principal or other person signing on behalf of the principal. Tex. Est. Code § 751.0021.
2. This document **MUST** be notarized, and typically requires a "wet" signature. Even if an online notary is available, current law appears to authorize online notaries to acknowledge only digital signatures, and it is unclear whether Uniform Electronic Transactions Act can be used to execute a financial power of attorney electronically.

17.3 Medical Powers of Attorney

- a. A person can appoint an agent under a medical power of attorney to make healthcare decisions on behalf of that individual if the individual cannot communicate with his or her doctors, and begins when a doctor certifies that the individual lacks competency to make health care decisions for himself or herself. A statutory form is provided in section 166.164 of the Texas Health & Safety Code..
- b. Section 166.011 of the Texas Health & Safety Code permits these documents to be executed electronically. In addition, the declarant may sign before either two witnesses or one notary. However, if the medical directive is witnessed, the two witnesses will still need to be in the presence of the declarant.

17.4 Other Advance Directives

a. **Declaration for Mental Health Treatment:**

This document allows you to make decisions in advance about mental health treatment and specifically three types of mental health treatment: psychoactive medication, convulsive therapy and emergency mental health treatment. The instructions that you include in this declaration will be followed only if a court believes that you are incapacitated to make treatment decisions. Otherwise, you will be considered able to give or withhold consent for the treatments.

b. Directive to Physicians and Family or Surrogates Form:

This form is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury.

c. Out-of-Hospital Do Not Resuscitate Information & Form:

This form instructs emergency medical personnel and other health care professionals to forgo resuscitation attempts and to permit the patient to have a natural death with peace and dignity. This order does NOT affect the provision of other emergency care including comfort care.

17.5 Wills

- a. In Texas, the testator must be 18+ years old (or married or in the armed forces) to execute a valid will. The testator must also have testamentary capacity.
- b. The Texas Estates Code allows attested wills, holographic wills, and codicils to wills. Nuncupative (oral) wills are not valid in Texas if made on or after September 1, 2007.
- c. Section 251.051 of the Texas Estates Code contains the general requirement that wills must be:
 - i. in writing,
 - ii. signed by the testator in person or by another person on behalf of the testator in the testator's presence at the testator's direction, and
 - iii. attested by two or more witnesses who are at least 14 years old.
- d. A will can be valid without a notary. However, a will cannot be made self-proved without a notarized self-proving affidavit. *See* Texas Estates Code §§ 251.101 *et seq.* A self-proved affidavit eliminates the necessity of a witness to the will to testify at the probate hearing. Tex. Est. Code § 251.104. So, even if a notary is unavailable, but two witnesses are available, a person can execute a valid will.
- e. If having two witnesses physically present at the execution of the will is a challenge, an alternative is a holographic will. Section 251.052 of the Texas Estates Code contains an exception to the witness requirement for wills. Under section 251.052, if a will is "written wholly in the testator's handwriting," witnesses are not required. While the statute does not require the holographic will to be dated, or technically even signed by the testator, it should be.

17.6 COVID-19 Online Notary Issue

Generally, the electronic execution of documents through the use of digital signatures is authorized by the Texas Uniform Electronic Transactions Act, found in chapter 322 of the Business and Commerce Code. Certain documents can be clearly executed electronically, such as medical powers of attorney, which is specifically authorized by section 166.011 of the Texas Health & Safety Code. However, certain documents, such as wills and financial powers of attorney, cannot typically be executed electronically. It is important to note that online notaries can only notarize electronic signatures. Documents that require "wet" signatures will require the physical presence of a notary during execution.

However, on April 8, 2020, Governor Abbott issued a [temporary order](#) relaxing the physical presence requirements for notarization and permitting the following documents to be notarized over two-way video:

- a. Self-proving affidavits for Wills;
- b. Financial Powers of attorney;
- c. Medical Powers of Attorney;
- d. Advanced Directives;
- e. Oath of Executors; and
- f. Oath of Guardians

PROBATE

17.7 Non-Probate Assets

There are four general categories of non-probate assets:

- a. Property passing by contract (life insurance proceeds, employment benefits, etc.)
- b. Property passing by right of survivorship (joint accounts and property owned with right of survivorship)
- c. Property held in trust
- d. Pay or transfer on death agreements (bonds, mortgages, promissory notes, securities accounts, contracts, deeds, etc.)

17.8 Estate Administration

- a. There are two types of administration: independent and dependent. *See* Tex. Est. Code § 401.003.
- b. The primary difference is how much supervision the court has over the probate proceedings. An Independent administration is free from judicial supervision, and typically no proceeding is required in the Court other than admitting the will to probate and the filing of the probate inventory or the affidavit in lieu of the probate inventory.
- c. Typically, the will provides for the appointment of an independent executor. If one is not appointed in the will, an Independent administration will be permitted if:
 - i. all of the decedent's heirs have been determined through a proceeding to determine heirship and
 - ii. all of the decedent's heirs consent to an independent administration. *See* Tex. Est. Code § 401.002.
- d. With a dependent administration, each action that the personal representative takes must be approved by the court.

17.9 Alternatives to Probate

- a. **Muniment of Title**
 - i. Muniment of Title is a proceeding that can be used if there is no need for a formal administration, or if more than four years have elapsed since date of death and the will was never probated.

- ii. The Texas Estates Code provides that an order admitting a will to probate as a muniment of title “constitutes sufficient legal authority for each person who owes money to the testator’s estate, has custody of property, acts as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, or purchases from or otherwise deals with the estate, to pay or transfer without administration the applicable asset without liability to a person described in the will as entitled to receive the asset.” Tex. Est. Code § 257.102.
- iii. Probate of a will as Muniment of Title works best when the only asset that needs to be transferred is a home or other real property. In addition, the estate must not owe any unpaid debt (other than a debt secured by a lien on real estate, such as a mortgage). In order to probate a will as a Muniment of Title, an Application to Probate a Will as Muniment of Title must be filed with the Court. The court will then schedule a hearing and testimony will be offered before the Judge will sign the Order Admitting the Will to Probate as a Muniment of Title only.

b. Small Estate Affidavit

- i. The Small Estate Affidavit is most often used for estates with small bank accounts, few debts, and homesteads. Once approved by the court, the Small Estate Affidavit serves as a legal document to identify a decedent’s heirs and each heir’s respective share of the decedent’s property. *See generally* Tex. Est. Code §§ 205.001–.008. You cannot use this form if the person had a will.
- ii. *Witness Requirements*
Among other things, the Small Estate Affidavit must be subscribed and sworn to by: (1) each distributee of the estate who has legal capacity (or if applicable, the natural guardian or next of kin of any minor distributee or the guardian of any other incapacitated distributee); and (2) two disinterested witnesses with personal knowledge of the facts. Tex. Est. Code § 205.002.
- iii. *General Requirements*
 - 1. The Small Estate Affidavit must state that:
 - (a) thirty (30) days have elapsed since the date of the decedent’s death;
 - (b) no petition for the appointment of a personal representative is pending or has been granted; and
 - (c) the value of the estate assets, excluding homestead and exempt property, does not exceed \$75,000. Tex. Est. Code § 205.001(a)(1)–(3).
 - 2. The Small Estate Affidavit must also include, among other things:
 - (a) a list of all known estate assets and liabilities;
 - (b) the name and address of each distributee;
 - (c) the relevant family history facts concerning heirship that show the right of each distributee to receive estate money or other property or to have any evidence of money, property, or other right of the estate as is determined to exist transferred to the distributee as an heir or assignee; and
 - (d) a list of all known estate assets that the applicant claims are exempt from listing. Tex. Est. Code § 205.001.

3. Once prepared, the Small Estate Affidavit should be filed with the Court. The Court will then examine the Small Estate Affidavit and approve it if it satisfies the requirements of the Texas Estates Code the requirements.
4. Note: Most courts have their own local rules and forms related to the use of the Small Estate Affidavit. An attorney is not necessary to prepare and file a Small Estate Affidavit with the Court.

17.10 Proceedings to Determine Heirship

- a. When a person dies and does not have a will, there are several options available to transfer title to property. The first is an Affidavit of Heirship, which is frequently used to transfer title to real property when there is no will. *See* Tex. Est. Code §§ 203.001, 203.002. Section 203.002 of the Texas Estates Code provides a statutory form of Affidavit of Heirship. The Affidavit of Heirship must be signed and notarized by a person who is familiar with the family history, genealogy, marital status, or the identity of the heirs, and must be filed in the county where the real property is located. Tex. Est. Code § 203.001.
- b. If property other than real property must be transferred, simpler methods cannot be used, and there is no will, then an Application for a Proceeding to Declare Heirship will need to be filed with the Court. Chapter 202 of the Texas Estates Code governs this proceeding. In an heirship proceeding, the Court will determine who the heirs of a decedent are, and what share of the estate that each will receive. Section 202.005 of the Texas Estates Code contains the requirements of what will need to be included in an Application for a Proceeding to Determine Heirship, which includes the names and physical addresses of all of the decedent's heirs, and their relationship to the decedent. If the names and addresses of the heirs are unknown, the Court will appoint an attorney ad litem to represent their interests. *See* Tex. Est. Code § 202.009. In addition, notice must be given to each person who is 12 years of age or older or to the parent of a child who is under the age of 12, which can be done by mail if the name and address are known, or by publication if the name and address cannot be ascertained. *See* Tex. Est. Code §§ 202.051, 202.052.
- c. At the Court proceeding, to declare heirship, testimony regarding a decedent's heirs and family history must be taken from two disinterested and credible witnesses. Tex. Est. Code § 202.151(a). The judgment to declare heirship will state the names of the heirs of the decedent and each of the heirs' respective share of the estate property. In addition, either at the same time or following the declaration of heirs, an Application to Appoint an Administrator for the estate must be done if there is property to be distributed. The application to declare heirs and for administration of the estate are often filed in one document. The application of an administrator is contained in chapter 301 of the Texas Estates Code.

17.11 Medicaid Estate Recovery Program (MERP)

- a. Medicaid is a governmental program that pays for healthcare for individuals with limited income. To defray the cost of providing long-term services, the State of Texas has the right to request money from a decedent's estate after they die.

- b. Claims for Medicaid recovery in Texas are debts of the estate. If the decedent: (1) applied for and received Medicaid benefits on or after March 1, 2005 and (2) was 55 years or older at the time services were received, then the Medicaid Estate Recovery Program (“MERP”) may have a claim against the estate. Tex. Admin. Code § 373.103.
- c. *Exemptions*
 MERP does NOT apply in cases where there is:
1. A spouse who is still alive;
 2. A child under 21 years of age;
 3. A child of any age who is blind or permanently or totally disabled under 42 U.S.C. § 1382c;
 4. The value of the estate is \$10,000 or less;
 5. The amount of Medicaid costs is \$3,000 or less;
 6. There is an unmarried adult child who lived full-time in the Medicaid recipient’s home for at least one year before the recipient died;
 7. The request for money would cause an undue hardship for the heirs. ([Application for Hardship Waiver](#));
 8. Certain assets and resources of American Indians and Alaska Natives are exempt from estate recovery claims. *See, e.g.*, Tex. Admin. Code § 373.207; <https://hhs.texas.gov/laws-regulations/legal-information/your-guide-medicaid-estate-recovery-program>.
- d. *What costs can be recovered?*
- i. The MERP program can recover costs related to long-term care provided through: Nursing facility services; Services of Intermediate Care Facilities for Individuals with Intellectual Disabilities; Home and community-based services under Social Security Act §1915(c) (all the long-term care Medicaid “waiver” services) and §1929(b) (“Community Attendant Services”); and related costs of hospital and prescription drug services. Tex. Admin. Code § 373.103.
 - ii. For purposes of MERP, “estate” includes all real and personal property of the decedent, “both as such property existed and as from time to time changed in form by sale, reinvestment, or otherwise” and as further described in section 22.012 of the Texas Estates Code.

17.12 Transfer on Death Deeds

A Transfer of Death Deed (“TODD”) is a way to transfer title to real estate upon the death of the decedent without the necessity of probate. The TODD allows a person to keep title to real property during their life and their beneficiary at their death. Multiple beneficiaries can be named and the TODD may be changed or canceled at any time. Although there is no longer a statutory form, the TODD must meet certain requirements. It must be in writing, signed and notarized, contain a legal description of the property and have the names and addresses of the beneficiaries. Tex. Est. Code § 114.057. The TODD must also state that the transfer is to take place at the owner’s death and it must be filed and recorded during the owner’s lifetime in the real property records of the county in which the property is located.

17.13 Life Insurance

- a. Life insurance is a way to provide your family with additional funds after your death. Sometimes, the policies are meant to cover funeral costs. Other times, they are meant to provide additional support to a family as a result of losing an income when a person dies.
- b. When you buy a life insurance policy, you will designate a beneficiary who is to receive the death benefit on your death.
- c. Life insurance passes by beneficiary designation so it is not subject to probate. In addition, the money is typically not subject to income taxes. There are various kinds of life insurance.
- d. Depending on the type of insurance and other factors, such as your age, gender, health, tobacco use, and hobbies, the insurance company will decide whether to sell you life insurance, and how much the premium will cost. If you are young and healthy, the policy will be cheaper, than if you are older, or unhealthy.

18.0 DISABILITY RIGHTS IN DISASTERS

OBLIGATIONS OF UNIT OF LOCAL GOVERNMENT- EMERGENCY MANAGEMENT

(Also refer to Chapter 2.1)

18.1 Overview

One of the primary responsibilities of state and local governments is to reduce vulnerability of people and communities to damage, injury, and loss of life and property resulting from disasters and emergencies. Texas Gov't Code Ch.418.

State and local governments must comply with Texas Human Resource Code, Title II of the ADA in emergency and disaster related programs, services, and activities they provide. TX. Hum. Res. Code ch. 121 et seq., 42 U.S.C. § 12132; see generally 28 C.F.R. § 35.130, § 35.149. This requirement applies to programs, services, and activities provided directly by state and local governments as well as those provided through third parties.

Under Title II of the ADA, emergency programs, services, activities, and facilities must be accessible to people with disabilities. This also requires making reasonable modifications to policies, practices, and procedures when necessary to avoid denying participation or benefit of a program, service or activity. Section 504 of the Rehabilitation Act may also be applicable depending on the type of service or activity provided by the local jurisdiction. 29 U.S.C. § 701 et seq.

18.2 Common Issues

- Lack of inclusive emergency preparedness planning
- Inaccessible emergency notifications
- Inaccessible emergency shelters
- Equitable access to emergency services including evacuations

18.3 FAQs

Q. 18-1 How do you ensure emergency services are equitable for individuals with disabilities?

Contact the local office of emergency management within either your county or municipality to ask questions based on the individuals need. For example, if an individual relies on public or paratransit services, in the event of a potential disaster, and is considering evacuation, what are the thresholds for when transportation services will terminate? Is there a voluntary registry to be notified of such occurrences? If an individual needs to be evacuated, can the local jurisdiction evacuate those with service animals or a fixed-frame wheelchair?

Q. 18-2 *Do warnings and notifications have to be accessible to those with hearing and visual impairments?*

Yes. State and local governments must use warning methods and emergency notifications that ensure all residents have the information necessary to make sound decisions and take appropriate action. Telecommunications must have visual and audio supports to supplement content, either through interpretation services, captioning, and if posted on-line, screen reader availability.

Q. 18-3 *Do mass care and emergency shelters have to accommodate individuals with disabilities?*

Yes. ADA and 504 requires those entities providing services to be conducted in such a way that affords individuals with disabilities the same benefit received by others (i.e.,-safety, comfort, food, medical care and support of family and friends). Buildings must be physically accessible, without any architectural barriers, but they must also provide the opportunity for continuum of care (i.e.,-ability to allow service animals, appropriate medical care and attendant services, modifications to feeding program to address nutritional needs and trained staff to address both physical and mental needs).

FEMA (*Also refer to Chapter 2.2*)

18.4 Overview - FEMA

Individuals with disabilities must be afforded an equitable opportunity to participate and benefit from FEMA's programs. Section 504 of the Rehabilitation Act of 1973 is applicable because FEMA is a federally funded program, thus FEMA must ensure policies and procedures do not discriminate against individuals with disabilities.29 U.S.C. § 701 et seq. Section 308 of The Stafford Act also affords nondiscrimination in disaster assistance and specifically regulates equitable and impartial relief operations. 42 U.S.C. § 5151.

18.5 Common Issues

- Inaccessible application process
- Failure to make reasonable accommodations to policies/procedures
- Ineffective Communication

18.6 FAQs

Q. 18-4 *What if I do not comprehend the FEMA application?*

FEMA must provide assistance if the applicant cannot understand the application itself or the application process. FEMA must provide translators, or physical assistance in completing the application process to afford an equitable opportunity for those with English language deficiencies, visual or hearing impairments or cognitive concerns. FEMA has a variety of options to apply for assistance, either online at

<https://www.disasterassistance.gov/>, by phone 1-800-621-FEMA (3362) or 1-800-462-7585 (TTY); or in-person at a shelter or Disaster Recovery Center.

Q. 18-5 *What if my disability prevented me from applying for FEMA assistance within the 60-day initial timeframe?*

An applicant may request a reasonable accommodation to FEMA's policy regarding the timeframe. The applicant must establish how the disability prevented them from applying to FEMA in a timely manner. For example, if an individual with a disability experienced additional medical needs, which resulted in hospitalization, a reasonable accommodation for extended time to apply might be appropriate. This same approach may also be used for the 60 day time-line in appealing FEMA denials.

Q. 18-6 *What if FEMA does not take into account my disability when determining if my residence is safe from disaster-related hazards?*

An applicant may disclose on the FEMA application any functional or access needs. However, this disclosure may not always ensure FEMA's ability to accurately determine the habitability of a residence. During the inspection process, an applicant should discuss any auto-immune deficiencies or mobility concerns that would prevent them from the same use and enjoyment of the residence as a non-disabled individual would be afforded. For example, if the residence has any air-borne or environmental hazards, which could impair the individual's ability to stay safely in the residence, and is not taken into account denies equitable access to housing assistance under FEMA's programs. Thus, a modification to FEMA's habitability standard as a reasonable accommodation would ensure individuals with underlying auto-immune deficiencies are not prohibited from benefiting from FEMA's programs. In addition, if the disability creates any type of safety concerns due to mobility or limited sensory awareness, and the residence contains potential hazards for the individual, the residence should be deemed unsafe to occupy. Failure to consider the needs and impact of the disability within the environment discriminates against individuals with disabilities.

Q. 18-7 *May an individual with a mental health impairment, residing in a temporary housing unit provided by FEMA, request a reasonable accommodation to FEMA's recertification process due to the exacerbation of the disability?*

Yes. FEMA's recertification process requires timely visits from FEMA employees to ensure the applicant is making progress towards a Permanent Housing Plan ("PHP"). However, sometimes these reoccurring visits may create an unwanted severity of a mental illness. While disaster trauma is a concern for all survivors, those with pre-disaster mental impairments may experience an intensity that creates an ineffective situation when working towards a PHP. The constant reminder of the situation and the inability to provide for their own stability may create a mental strain where the applicant becomes non-responsive or fails to meet deadlines. The applicant should engage with FEMA to determine what reasonable accommodations may be appropriate. For example, appropriate reasonable accommodations might be decreasing the number of timely visits, or allowing alternatives to show verifiable documentation for PHP.

Q. 18-8 What do I do if FEMA has failed to accommodate my disability?

Unfortunately, discrimination may occur at various times in dealing with FEMA. If at any time through the application process, eligibility determination, or administration of FEMA's programs, an individual with a disability has been denied an opportunity or ability to benefit from FEMA's program, the situation should be looked at more closely. Seeking legal advice as quickly as possible would be advised to ensure the applicant is not missing timelines within FEMA's informal procedures and also to consider the breadth of the entire situation. An applicant may also contact FEMA's Office of Equal Rights at (800) 621-3362 or at (202) 646-3535, option #1 Civil Rights. <https://www.fema.gov/office-equal-rights>

HOUSING (Also refer to Chapter 4)

18.7 Overview - Housing

In the event of a disaster or emergency, certain rights and remedies exist for all owners and occupants under Texas statutes and common law. However, in addition to the substantive legal issues related to housing, individuals with disabilities are afforded protections under federal law to ensure their rights to equitable housing opportunities are upheld. Under the Fair Housing Act ("FHA"), Americans with Disabilities Act ("ADA"), Section 504 of the Rehabilitation Act ("504") and state law, Ch. 121 of the Texas Human Resource Code, safeguards are utilized to prohibit discriminatory conduct toward individuals with disabilities. 42 U.S.C. §§ 3601 et seq., 42 U.S.C. § 12101, 29 U.S.C. § 701 et seq.

FHA protects people from a landlord or other housing provider's discriminatory behavior or actions based on a tenant's disability or that of their guests. It applies to most housing situations. Examples: landlords, apartments, trailers, rental homes, public housing, and numerous others. 42 U.S.C. §§ 3601 et seq. (2019); see Housing Discrimination under the Fair Housing Act, HUD.gov, https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview

ADA prohibits discrimination because of someone's disability by state and local governments. It also prohibits discrimination in most public places. Examples: apartment leasing offices, public housing, housing authorities, transportation providers, and shelters. 42 U.S.C. § 12101; see Americans with Disabilities Act, U.S. Department of Justice Civil Rights Division Disability Rights Section, <https://www.ada.gov/cguide.htm>

Section 504 ensures people are not excluded from programs or activities funded by the federal government or operated by a government agency like Housing and Urban Development ("HUD"), FEMA, or Health and Human Services ("HHS"). Examples: public housing, Housing Choice vouchers, shelters, some housing for people who are seniors or people with disabilities, and some nursing homes and group homes. 29 U.S.C. § 701 et seq.; see Rehabilitation Act, U.S. Department of Justice Civil Rights Division Disability Rights Section, <https://www.ada.gov/cguide.htm>

18.8 Common Issues

- Failure to provide reasonable accommodations (i.e., to the lease agreement, a repair policy, HOA restrictions, housing authority, landlord rules, or city regulation/ordinances)

- Residence uninhabitable due to disability related needs
- Inaccessible housing

18.9 FAQs

Q. 18-9 *Must I still pay rent, if my residence is uninhabitable?*

Yes. At least until your contractual obligations are concluded either by termination of your lease agreement with the landlord or by an adjudication. However, if your landlord has refused to make repairs, after a reasonable time to ensure habitability, a reasonable accommodation may be requested to terminate the lease agreement or, if applicable, to provide an alternative residence.

Q. 18-10 *Does the habitability standard in Texas account for an individual with disabilities need?*

A disaster-related hazard, left unmitigated, might substantially impact the health of an individual with a disability. Texas Property Code § 92.052(a) addresses the landlord's duty to repair or remedy, if the condition materially affects the physical health or safety of an ordinary tenant. A landlord might argue the condition would not impact an ordinary tenant under Texas law and thus he has no duty to repair. This is not accurate, as the FHA would ensure repairs or mitigation of the hazard for an individual with a disability to ensure the same use and enjoyment of the residence as a non-disabled peer would enjoy.

Q. 18-11 *When must a public housing authority relocate an individual due to a disaster damaging the residence?*

A public housing authority ("PHA") must relocate any resident when displaced from a federally funded program. The Uniform Relocation Act ("URA") is a federal law to ensure recipients who benefit from federally funded programs are not disproportionately impacted due to displacement and to prevent homelessness.⁴² U.S.C. §4601, 49 C.F.R. pt. 24. Due to the large number of individuals with disabilities who rely on benefits for economic assistance and who are also below the adjusted median income, they also rely on public housing assistance. If the individual with a disability is part of a project based housing program, the PHA has an obligation to relocate (or provide financial assistance) to another accessible, safe, and sanitary unit.

Q. 18-12 *When may I request a reasonable accommodation?*

Any time, when you are being denied access to, the benefit of, or use and enjoyment of your residence, a disaster or emergency notwithstanding, reasonable accommodation requests may remedy an unlawful policy, procedure, or practice. A reasonable accommodation request is made when someone asks for a change or exception to a rule, practice, or service that may be necessary for a person with a disability to have the same opportunity as someone without a disability to use and enjoy their home (or amenities owned by or controlled by your landlord or HOA). For example, in the event of a disaster or emergency, a disability may prevent an individual from complying with an HOA expectation to clean up or remove debris from their property. A reasonable accommodation to extend the timeframe for HOA compliance might be appropriate to afford the individual additional time to arrange supports. If a disability is exacerbated and

prohibits the individual from the same use and enjoyment of their residence, a request for a reasonable accommodation may start the process of remedying the situation.

In the event discriminatory conduct persists, immediately seek legal advice.

Additional options to consider: filing a Texas Workforce Commission (“TWC”) housing complaint. See TWC website <https://www.twc.texas.gov/partners/how-submit-housing-discrimination-complaint> for details or call: 512-463-2642 or (Texas only) 888-452-4778.

The Department of Justice (“DOJ”) also addresses housing violations under the FHA. See <https://www.justice.gov/crt/housing-and-civil-enforcement-section> or call (202) 514-4713; TTY - 202-305-1882; and To Report an Incident of Housing Discrimination: 1-800-896-7743.

EMPLOYMENT *(Also refer to Chapter 6)*

18.10 Overview - Employment

The Americans with Disabilities Act and state laws protect individuals with disabilities from discrimination in employment. The law covers private employers with 15 or more employees. The law also covers state government agencies, local government offices, employment agencies, and labor unions. Finally, even private employers with fewer than 15 employees may be covered if they receive federal money. 42 U.S.C. §§ 12101 et seq.; 29 CFR pts. 1630, 1602; Tex. Hum. Res. Code ch.121 et seq.

The law makes discrimination illegal in all employment practices. This includes job applications, hiring, firing, promotion, pay, training, and other terms, conditions, and privileges of employment. The law also applies to recruitment, advertising, layoff, leave, benefits, and all other employment-related activities.

18.11 Common Issues

- Failure to accommodate an individual with a disability in the workplace
- Unlawful termination

18.12 FAQs

Q. 18-13 Must my employer provide reasonable accommodations in the event of a disaster?

It depends. The law also requires that employers provide reasonable accommodations to employees with disabilities who need an accommodation to perform the essential functions of their job. The ADA provides protection regardless of whether there is a disaster, but in a disaster, a person with a disability who previously did not need an accommodation may suddenly need one. An employer still has to provide a reasonable accommodation to an employee with a disability, even if it only became necessary because of the disaster. An example of this may include someone who is immunocompromised may need to work from home if she or he is at particular risk from contracting COVID-19. In this example, working from home could be considered a reasonable accommodation under the Americans with Disabilities Act.

Q. 18-14 How does an individual with a disability request a reasonable accommodation in the work place?

If a person with a disability needs an accommodation at work, they usually have to ask for one. Although there are no magic words that have to be used in the request, using the term “reasonable accommodation” can help. A request may be oral, but it is usually a good idea to put it in writing. The employer may have special forms for an accommodation request and it is usually a good idea to use them, though it is not required. The employee should ask for the accommodation as soon as they think they need one. The employer has the right to request limited medical information in support of the accommodation request.

The request should be made to the supervisor or to the company’s personnel or human resources department.

While requesting an accommodation, it is recommended to give examples of the requested accommodation. For example, if the request is to be reassigned to a different job, the request should make that clear. The main thing is to let the employer know that a change or adjustment is needed because of a disability.

Q. 18-15 What do I do if I feel if I have been discriminated against or unlawfully terminated because of my disability?

The Equal Employment Opportunity Commission investigates complaints of disability discrimination. For additional information on filing an EEOC complaint, please see: <https://www.eeoc.gov/how-file-charge-employment-discrimination>

For additional information about employment rights generally and in times of disaster like the Covid-19 pandemic please see:

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

<https://www.disabilityrightstx.org/en/handout/employment-discrimination/>

<https://www.disabilityrightstx.org/en/handout/disability-discrimination-at-work-now-that-covid-19-is-here/>

<https://www.eeoc.gov/laws/guidance/your-employment-rights-individual-disability>

<https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>

<https://www.eeoc.gov/wysk/what-you-should-know-about-ada-rehabilitation-act-and-coronavirus>

<https://media.disabilityrightstx.org/wp-content/uploads/2020/03/31210515/covid19-employment-rights-DRTx-EJC-LSLA-WDP-FINAL.pdf>

VOTING (Also refer to Chapter 12)

18.13 Overview - Voting

Voting in Texas is governed by the Texas Election Code. In the event of a disaster or emergency, all Texans are afforded alternatives when documentation has been damaged or lost.

<https://www.votetexas.gov/harvey/index.html>. In addition, individuals with disabilities are afforded additional protections under ADA, 504, and chapter 121 of the Texas Human Resource Code.

18.14 Common Issue

- Lost identification

18.15 FAQs

Q. 18-16 What do I do if I have lost my ID?

Generally, a voter with a disability who doesn't have a photo ID has two options:

1. Get a permanent exemption from the photo ID requirement if he or she:

-Can provide proof (benefit verification letter) to the county voter registrar that he or she has a disability determination from the U.S. Social Security Administration, OR

-Is a veteran who can provide proof (rating percentage letter) to the county voter registrar that he or she has a disability rating of more than 50% from the U.S. Department of Veterans Affairs; AND

-Complete the Disability Exemption Form on the Texas Secretary of State website and mail it, along with the proof of disability letter, to the county voter registrar so that it is received at least 30 days prior to an election. <https://www.sos.state.tx.us/elections/forms/pol-sub/index.shtml>

2. If the voter is eligible to vote by mail because of a disability, the voter may do so without having to provide a photo ID. A voter with a disability who isn't eligible for the exemption and doesn't want to vote by mail is bound by the same requirements for a photo ID as voters who don't have a disability.

Voters can also call the Disability Rights Texas Voting Rights Hotline at 1-888-796-VOTE (8683) or email vote@drtx.org. For general resources, please see: <https://my.lwv.org/texas>

For additional information about voting by mail in light of COVID-19, please see <https://www.disabilityrightstx.org/en/handout/covid-19-voting-questions/>

SOCIAL SECURITY (Also refer to Chapter 7)

18.16 Overview - Social Security

Social Security Disability Insurance ("SSDI") and Supplemental Security Income ("SSI") benefits are the largest of several Federal programs that provide assistance to people with disabilities. While these two programs are different in many ways, both are administered by the Social Security Administration ("SSA") and only individuals who have a disability and meet medical criteria may qualify for benefits under either program. SSDI pays benefits to an individual with a disability and certain members of the family if they are

"insured," meaning they worked long enough to be vested in receiving benefits and paid Social Security taxes, while SSI pays benefits based on financial need.

18.17 Common Issues

- Inability to receive payments
- Accessing SSA offices

Q. 18-17 How can I ensure receipt of SSDI/SSI payments in the event of a disaster?

The most efficient way to ensure continuity of SSDI and SSI payments is by setting up direct deposit into an account at a banking institution. Otherwise benefit checks will be mailed and continue to be mailed unless the United States Postal Service makes changes to their delivery services due to impacts of a disaster. <https://www.ssa.gov/deposit/>

Q. 18-18 How do I contact SSA in the midst of a disaster or emergency?

If SSA offices stop in-person services to the public due to a disaster/emergency, people needing assistance can still get help from SSA by using the online services or calling SSA 1-800-772-1213 <https://www.ssa.gov/onlineservices/>. The SSA Hearing Office can help with the following issues: confirming availability for a telephone hearing, or documenting that the person would like a postponement if they would prefer to wait until an in-person or video hearing is available, updating records to ensure SSA has the appropriate telephone number and address, and providing status for pending hearings. You can find your local hearing office at 1-800-772-1213 or on-line https://www.ssa.gov/appeals/ho_locator.html

Q. 18-19 May I still receive SSA benefits if I also receive unemployment assistance due to a disaster/emergency?

Yes. Unemployment benefits are mutually exclusive of SSA benefits. Unemployment assistance at the state (Texas Work Force Commission) or federal level (FEMA's disaster unemployment assistance) are contingent on the inability to stay employed, and anything received is considered taxable income. In addition, receiving SSA benefits may reduce your unemployment compensation.

<https://www.twc.texas.gov/jobseekers/unemployment-benefits-services>

<https://www.ssa.gov/coronavirus/assets/materials/economic-impact-payments-for-social-security-and-ssi-recipients.pdf>

Protection and Advocacy for Beneficiaries of Social Security (PBASS) at Disability Rights Texas may be able to assist. 1-800-252-9108 Monday through Friday, 9:00 am to 4:00 pm, or online at any time at www.intake.DRTx.org. Individuals who are deaf or hard of hearing can call the toll-free video phone at 1-866-362-2851 or the Purple 3 video phone at (512) 271-9391.

Another resource might be Community Work Incentive Coordinators (CWICS) at Work Incentive Planning and Assistance Programs (WIPA). WIPA projects provide free benefits counseling to eligible Social Security and Supplemental Security Income beneficiaries who have a disability to help them make informed choices about work. WIPA projects are staffed by Community Work Incentive Coordinators (CWICs) who provide in-depth counseling about working, earning more money, and how working may affect your

benefits. To find the local CWIC/WIPA provider visit <https://choosework.ssa.gov/findhelp/> or call Ticket to Work at 1-866-968-7842 (TTY 1-866-833-2967).

Q. 18-20 *May I take legal action if I have been taken advantage of as a member of a vulnerable class?*

It depends. If you have sustained economic injury, there is a possibility to pursue legal remedies. It would depend on the specific details of your case. If you receive calls, emails, or other communications claiming to be from the U.S. Treasury Department, the Internal Revenue Service (IRS), the Social Security Administration (SSA), or another government agency offering related grants or economic impact payments in exchange for personal financial information, or an advance fee, or charge of any kind, including the purchase of gift cards, please do not respond as it is likely fraud or a scam. Generally, these agencies will correspond either by mail notifications or by on-line accounts set up by user.

Contact an attorney to discuss the details of your case, or you may contact the Office of the Inspector General of SSA to report suspected fraud or scams, <https://oig.ssa.gov/>, Texas Attorney General <https://www.texasattorneygeneral.gov/consumer-protection/file-consumer-complaint> or call (800) 621-0508, file Better Business Bureau complaint at <https://www.bbb.org/consumer-complaints/file-a-complaint/get-started> or call 1 (703) 276-0100 or even file a Federal Communications Commission complaint at <https://consumercomplaints.fcc.gov/hc/en-us> or call 1-888-225-5322; TTY: 1-888-835-5322, or Videophone: 1-844-432-2275.

HEALTH CARE (Also refer to Chapter 10)

18.18 Overview - Health Care

Following a disaster and emergency, people with disabilities must be afforded a continuity of care in the least restrictive and most integrated environment possible. Some individuals with disabilities rely on critical support services funded by state and federal programs for continued community integration, while other individuals may reside in state-supported facilities. In the event of a disaster, continuity of these support services is critical to ensure the physical and mental well-being of residents in long-term care facilities and would ensure continued autonomy for those in the community to prevent unnecessary institutionalizations.

Continuity of Services. The Texas Administrative Code (TAC), Title 26, Part 1, Chapter 558, § 558.256, relating to Emergency Preparedness Planning and Implementation, applies to all categories of service on a Home and Community Support Service Agency (HCSSA) license. Section 558.403(w)(2) contains additional licensing standards for a hospice inpatient unit.

A HCSSA is responsible for the care and services it agrees to provide to its clients and for the coordination of care. For a client whose services provided by the agency must continue uninterrupted to maintain the client's health and safety, the response phase of a HCSSA's emergency preparedness plan must include procedures for communicating with other healthcare providers that can provide the necessary services during an emergency.

The rules do not require HCSSAs, other than hospice inpatient unit, to evacuate or transport clients in an emergency or to continue to provide care to clients in emergency situations that are beyond the agency's control and that make it impossible to provide services. Because HCSSA clients do not receive 24-hour

care from the HCSSA and because they reside in the community, clients have the same choices and options as other members of the community to shelter in place, evacuate, or arrange for evacuation through family, community resources, or by calling 2-1-1.

Unnecessary Institutionalizations

The right of an individual with a disability to not be unnecessarily institutionalized is delineated in the U.S. Supreme Court case of *Olmstead v. Georgia*. This 1999 decision was based on the Americans with Disabilities Act (ADA) Title II and incorporates the “integration mandate.” The integration mandate requires public entities to “administer services, programs, and activities in the most integrated setting appropriate to the needs of the qualified individual with disabilities.”

The *Olmstead* case only involved one type of institution, which was a psychiatric hospital. Courts quickly made clear that *Olmstead* applied to all state and Medicaid funded institutions, including nursing facilities. Because of the *Olmstead* decision, the State of Texas has developed a variety of programs for individuals who qualify for Medicaid.

However as a result, or in the aftermath of a disaster, some individuals with disabilities are unnecessarily institutionalized in restrictive placements such as nursing homes because agencies that provide general disaster recovery resources are often less familiar with the continuum of services and placements for people with disabilities.

18.19 Most Common Issues

- Continuum of Care
- Forced Institutionalizations
- Unreasonable delay or denial of community integration and continuity of services

18.20 FAQs

Q. 18-21 What do I do if I am an individual with a disability who relies on critical support services and I have been displaced from my residence and have not received my services?

First, contact the individual who oversees your services, referred to as a service coordinator, case manager, or direct service manager to determine continuity of services. In some cases, previous arrangements with contiguous jurisdictions might have been pre-arranged. If this option does not produce a remedy, contact the HHSC regional program manager for the geographic area in which you are located <https://hhs.texas.gov/doing-business-hhs/provider-portals/long-term-care-providers/home-community-support-services-agencies/hcssa-emergency-preparedness>, or the local mental and public health authority for the geographic area in which you are located. In the event you are relocated, you may also want to update your demographic information at <https://www.yourtexasbenefits.com/Learn/Home> or contact HHSC customer service at 877-541-7905.

Q. 18-22 What if a resident wants to leave or evacuate a nursing facility?

Normally, there is nothing preventing a nursing home resident from leaving a nursing facility at any time, provided that they have somewhere to live and the appropriate supports and services to maintain their health and safety. However, attempting to leave during a disaster or emergency could possibly be complicated by a “shelter in place order” within your geographic area or if your facility is under quarantine because of a suspected communicable disease.

The State of Texas does have a variety of programs that provide in-home supports and services that are available to nursing home residents that qualify for Medicaid. These programs could potentially allow a resident to leave a nursing facility and return to the community. Applying for these programs can often be confusing. You should ask the service coordinator of your managed care company (MCO), or the social worker at your particular facility to inquire as to what in-home supports and services are available should you choose to leave.

Q. 18-23 What if I have a dependent or family member who currently resides in a state supported hospital or state supported living center and I am concerned about their well-being after a disaster?

Facility administrators and government officials are all cognizant of the fact that movement of any critical care patient from a hospital, or evacuation of a substantial number of individuals, increases the potential for morbidity and mortality risks. Because of the inherent risks that people with medical needs face during the evacuation of a medical facility, certain critical-care patients should not be moved unless absolutely necessary. Experts in emergency management and health care endorse the concept of sheltering-in-place and support efforts to harden structures so that individuals may be safely sheltered in place.

The administrators of each facility, in close coordination with their local officials and emergency management, determine the need to evacuate or shelter-in-place. Local and regional authorities will utilize the capabilities of volunteers Medical Reserve Corps (MRC), Citizen Corps, Emergency System for Advance Registration of Volunteer Health Professionals (ESAR-VHP), professional associations, and other non-governmental agencies to support the response to the emergency.

Facilities licensed and regulated by HHSC are required to have disaster plans that address minimum requirements, such as but not limited to communication and continuity of services. Contact the facility for specific procedures.

Q. 18-24 In the event of a shelter-in place order, may a resident still receive visitors at a long-term care facility?

In some situations, state agencies may restrict visitations to protect the most vulnerable populations and for the interest of public safety and welfare. To stay up-to-date on guidelines, contact your local mental or public health authority, or the Office of Emergency management within your jurisdiction. To accommodate this need, facilities may be encouraged to use alternate means of communication such as FaceTime, Skype, or other video or audio systems for residents to maintain contact with family and friends.

Q. 18-25 *In the event of a disaster or emergency, will residents of long-term care facilities who are forced to shelter-in-place or relocated still be able to see their doctor, when not within their physical location?*

Generally, yes. During disaster declarations, the Governor may suspend or grant the Centers for Medicare and Medicaid Services (CMS) waivers that would allow the utilization of telehealth services. This waiver or temporary suspension negates the requirement that physicians and non-physician practitioners perform in-person visits for nursing home residents.

Q. 18-26 *I have been diagnosed with mental illness (MI), an intellectual developmental disability (IDD) or related condition, and referred to a nursing facility. Are the Pre-admission Screening Resident Review (PASRR) Requirements still in place?*

Yes and no. While specialized services are still available in nursing facilities for persons with MI, IDD, or a related condition, in the event of a disaster or emergency, the Center for Medicare and Medicaid Services (“CMS”) may institute waivers allowing states and nursing homes to suspend PASRR assessments. For example, a resident with a mental illness (MI), an intellectual disability (ID), or a related condition may be admitted for 30 days as a new patient without the PASRR assessment but should receive their assessments as soon as resources become available.

Q. 18-27 *What if I need help understanding or exercising my rights in a nursing home?*

If you are a person with a disability in the state of Texas and you are experiencing a legal problem, are having difficulty obtaining disability services, or are having your rights violated, seek legal advice. Disability Rights Texas (DRTx) is a nonprofit in Texas with experience navigating the community integration of people with disabilities. With advocacy, many such individuals can access Medicaid waiver programs that can provide staff support in a community-based residence that allows more freedom. This advocacy requires knowledge of the complex system of long-term supports and services, where different programs serve different age and disability groups. It is very likely that there are impacted individuals not receiving Medicaid supports and services (e.g., nursing, prescription medications, community waivers, and durable medical equipment), and these individuals have been unnecessarily institutionalized, or at risk of unnecessary institutionalization. Call the intake line at 1-800-252-9108 Monday through Friday, 9:00 am to 4:00 pm, or you can apply online at any time at: <https://securec24.ezhostingserver.com/drtx-org/WebIntake/>

Other resources to file a nursing facility complaint, contact:

Texas Health and Human Services; Complaint and Incident Intake 1-800-458-9858;

<https://hhs.texas.gov/about-hhs/your-rights/complaint-incident-intake> or Office of the State Long-Term Care Ombudsman, 1-800-252-2412 or https://apps.hhs.texas.gov/news_info/ombudsman/

EDUCATION (Also refer to Chapter 14)

18.21 Overview - Education

In the event of disasters and emergencies, students with disabilities are entitled to continuity of programming and equitable access. Federal laws that afford students with disabilities protections are the Individuals with Disabilities Education Act (“IDEA”) or Section 504 of the Rehabilitation Act (“504”). 20 U.S.C. § 1412 and 29 U.S.C. § 701 et seq. Depending on the nature of the event and subsequent impact

on families and individuals, programming and accessibility options may vary. *Please see Ch. 14 for specific information on McKinney-Vento Act and displaced students in attendance of public schools.*

If the disaster leads to a virtual or an in-home instructional environment, where instruction is teaching through technology and will be the method provided for all students, the entity must also ensure that the alternative instruction affords a student with a disability an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.

18.22 Common Issues

- Inequitable access to educational programming
- Continuity of programming

18.23 FAQs

Q. 18-28 My family has been displaced from our residence due to a disaster, however I have no idea if or when we could return, can my child attend the temporary district we have relocated to?

Yes. McKinney-Vento guarantees the right of homeless students to immediate enrollment. When displaced, the Texas Education Code allows a homeless student to remain in the district of origin or attend any school district in Texas where the youth is temporarily located. *See Ch. 14.*

Q. 18-29 I am in college and my classes are now online only. Will they be accessible?

Talk to the school's disability services office and your professors to review your current accommodations and to make any adjustments that are necessary. Federal law requires that schools with online classes communicate with students through one of several types of technology, which can include email. Teachers must also have substantive communication with students (either individually or collectively) on a regular basis. In addition, all media and documents must be accessible to those individuals with vision and hearing impairments. Accessibility and equal opportunity issues might range from captioning of a live lecture to adaption of methods for the student to demonstrate content knowledge.

Q. 18-30 My higher education institution is still holding classes but I can't go because I am under quarantine or have a disability that puts me at higher risk. What now?

Talk to your professors and your school's disability services office to set up a distance-learning plan.

Start with contacting the school's disability services office, because they should be the point of contact with the most information. It's suggested to talk to your professors and teachers also, so they are aware of the situation. If you have a vision or hearing disability, make sure to discuss how they can make any lectures or materials accessible to you. Schools have the flexibility to provide distance learning to students when they cannot attend, or when on-campus classes have been suspended. Even if your classes are not being disrupted now, it's a good idea to create a plan in advance.

Q. 18-31 *My child has an IEP and receives educational supports, must the school still follow if implementing virtual learning?*

Yes. Neither state nor federal law provides flexibility to the local education agency (schools, “LEA”) in times of emergency regarding their obligation to provide Free and Appropriate Education (“FAPE”) to students receiving special education services. If an LEA closes its schools because the functioning or delivery of educational services is disrupted and does not provide any educational services to the general student population, then an LEA would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the LEA must make every effort to provide special education and related services to the child in accordance with the child's Individualized Education Program (IEP). In addition, the Annual Review and Dismissal (ARD) committee would be required to make an individualized determination as to whether compensatory services are needed to make up for any skills that may have been lost because of an extended school closure.

If schools are closed, but the LEA continues to provide educational opportunities to the general student population during the closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. The LEA must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP.

If there are services, accommodations, and modifications required by the student’s IEP that cannot be provided during this time, the student’s ARD committee must determine which services it can provide to meet the student’s needs (34 C.F.R. § 300.324(a)(4)). Please see the Texas Education Agency website for procedural steps. <https://tea.texas.gov/texas-schools/health-safety-discipline/covid/covid-19-support-special-education-0>

Q. 18-32 *My child is on a 504 plan and receives accommodations, must a new school follow the established 504 plan or if virtual learning is being offered will accommodations remain in place?*

Yes. Section 504 of the Rehabilitation Act also affords FAPE. Thus, a new receiving school must follow the current plan until the committee agrees to amend it or in the event of a virtual learning environment, the school must ensure equitable access and a continuation of programming.

19.0 RESOURCE & REFERRAL GUIDE

At times, a referral to an attorney is not the best course of action. In your search for assistance, you may find that private community organizations or one or more local, state, or federal agencies can help you. In addition to providing emergency information, this guide lists resources, community service organizations, and government agencies with offices located in the areas where the people are being temporarily housed. It also includes the toll-free numbers for many state and federal agencies.

19.1 Federal Disaster Assistance

General Assistance	
COVID-19	<p>The White House, CDC and FEMA have created a website with resources related to COVID-19. There is information for everyone, including people who may think they are sick, travelers, pregnant women, children and small businesses.</p> <p>https://www.coronavirus.gov/</p>
Disaster Assistance	<p>The Disaster Assistance Improvement Program (DAIP) provides disaster survivors with information, support, services, and a means to access and apply for disaster assistance through joint data-sharing efforts between federal, tribal, state, local, and private sector partners.</p> <p>The site allows individuals to:</p> <ul style="list-style-type: none"> ☐ Find disaster assistance that meets the needs of an individual's particular circumstances ☐ Apply for disaster assistance and reduce the number of forms required to be completed ☐ Check the status of applications ☐ Find a FEMA Disaster Recovery Center nearby ☐ Find a hotel or a new place to live ☐ Find programs to help with food and nutrition needs ☐ Change address for Social Security, VA, or other federal benefits, and ☐ Learn about Small Business Administration (SBA) loans for homeowners, renters, and businesses. <p>https://www.disasterassistance.gov/</p>
FEMA Assistance	<p>FEMA Helpline Call 7 a.m. to 11 p.m. ET, 7 days a week: 1-800-621-FEMA (1-800-621-3362) TTY 1-800-462-7585 711 or VRS 1-800-621-3362 Or write to:</p>

	<p style="text-align: center;">FEMA P.O. Box 10055 Hyattsville, MD 20782-8055</p> <p>FEMA Internet Help Desk Call 24 hours a day, 7 days a week: 1-800-745-0243</p> <p>FEMA Disaster Recovery Centers FEMA Disaster Recovery Centers (DRC) are accessible meeting places set up after a disaster. The services offered at each DRC may vary. There are two ways to find a DRC nearby:</p> <ol style="list-style-type: none"> 1. Use the DRC locator found at http://egateway.fema.gov/ESF6/DRCLocator 2. Text DRC and a Zip Code to 4FEMA (43362). Example: "DRC 77001". Using this option does not add you to any messaging service.
<p>Crisis Counseling Assistance</p>	<p>FEMA’s Crisis Counseling Assistance and Training Program (CCP) assists individuals and communities in recovering from natural and human-caused disasters through community-based outreach and access to mental health services.</p> <p>Disaster Distress Helpline at 1-800-985-5990 FEMA Helpline at 1-800-621-3362, TTY1-800-846-8517.</p> <p>For more information: www.samhsa.gov/dtac/ccp</p>
Emergency Housing	
<p>General</p>	<p>Search for open shelters near you by texting SHELTER and a Zip Code to 4FEMA (43362). Example: "SHELTER 01234". Using this option does not add you to any messaging service.</p>
<p>FEMA Evacuee Hotels</p>	<p>FEMA has approved non-congregate sheltering assistance for some individuals and households impacted by earthquake activity in the Commonwealth of Puerto Rico. Individuals and households eligible for this assistance will receive communication directly from FEMA officials explaining the process for accessing and checking into available lodging.</p> <p>If you received damages as a result of the earthquake and have questions regarding FEMA assistance, please call the FEMA Helpline at 1-800-621-3362; for people who are deaf, hard of</p>

	<p>hearing or with speech disabilities, the Teletypewriter number is 1-800-462-7585.</p> <p>http://www.femaevachotels.com/</p>
American Red Cross	<p>You can find shelters by:</p> <ul style="list-style-type: none"> ☐ Visiting www.redcross.org ☐ Downloading the “Emergency Red Cross Mobile” app ☐ Calling 1-800-REDCROSS (1-800-733-2767)
Salvation Army	<p>Click on “Locations” and enter your zip code to find your nearest Salvation Army location:</p> <p>http://www.salvationarmyusa.org</p>
Family Locators	
Safe and Well	<p>The American Red Cross maintains Safe and Well, a web-based system that helps reunite friends and family displaced by a disaster.</p> <p>https://safeandwell.communityos.org/cms/index.php</p>
National Center for Missing & Exploited Children	<p>The National Emergency Child Locator Center is operated by the National Center for Missing & Exploited Children (NCMEC) and may be activated through a request to FEMA from a State, Tribe or Territory during Presidentially-declared disasters. The primary mission is to assist with the reunification of children who have become separated from their parents or legal guardians.</p> <p>Individuals reporting or searching for a child missing as a result of a disaster should call the NEMEC at 1-800-843-5678; it is staffed 24 hours a day.</p>
Next of Kin Registry	<p>The Next of Kin Registry (NOKR) is a FREE tool for daily emergencies and national disasters. NOKR is your emergency contact system to help if you or your family member is missing, injured, or deceased.</p> <p>www.nokr.org</p>
Other	<p>USA.gov also offers other sources for locating family.</p> <p>https://www.usa.gov/after-disaster</p>

Finding and Caring for Pets	
Missing Pet Network	http://www.missingpet.net/
Pet-Friendly Hotels	For a list of pet-friendly hotels, please visit: https://www.gopetfriendly.com/
Animal Assistance Organizations	<p>Humane Society (HQ Washington, DC) 1-866-720-2676 (M-F 8:00 am to 11:00 pm and Sat. and Sun. 9:00 am to 6:00 pm Eastern time) www.humanesociety.org</p> <p>Wings of Rescue</p> <p>Wings of Rescue is a 501(c)3 charity founded in 2012 by Cindy Smith that flies endangered pets from high-intake and/or high-kill shelters to no-kill shelters, from which they have all been adopted into loving homes.</p> <p>https://www.wingsofrescue.org/</p> <p>ASPCA</p> <p>https://www.asPCA.org/</p> <p>GreaterGood.org</p> <p>http://greatergood.org/</p> <p>Best Friends Animal Society</p> <p>1-435-644-2001 – General Information https://bestfriends.org/</p>
Legal Services Hotlines	
Disaster Legal Services Program	<p>The purpose of Disaster Legal Services (DLS) is to provide legal assistance to low-income individuals who, prior to or as a result of the disaster, are unable to secure legal services adequate to meet their disaster-related needs.</p> <p>Hotlines:*</p> <p>Texas 1-800-504-7030 (routed to Lone Star Legal Aid)</p>

	*Hotline is available in English and Spanish
National Disaster Legal Aid	The National Disaster Legal Aid Resource Center serves as a centralized national resource for legal aid, pro bono, and criminal defender attorneys across the country on legal issues related to all types of disasters. https://www.disasterlegalaid.org/
State Bar Associations	<p>Texas 1-800-204-2222 www.texasbar.com</p> <p>Alabama 1-800-354-6154 www.alabar.org</p> <p>Louisiana 1-800-421-5722 www.lsba.org</p> <p>Mississippi 1-601-948-4471 www.msbar.org</p> <p>Florida 1-850-561-5600 www.floridabar.org</p>
International Evacuees	
General Consulate Information	www.usembassy.gov
Select Embassy Information in Houston, Texas	<p>Canada 1-713-821-1440</p> <p>Costa Rica 1-713-266-0484</p> <p>El Salvador 1-888-301-1130 / 1-713-773-3539</p> <p>France 1-346-272-5363</p> <p>Guatemala 1-713-953-9531</p>

	<p>Honduras 1-346-201-6711 / 1-713-785-5932</p> <p>Mexico 1-713-271-6800 / 1-713-995-1227</p> <p>Nicaragua 1-713-789-2762</p> <p>Panama 1-713-622-4451</p> <p>Vietnam 1-713-850-1233/ 1-713-840-0096</p>
Insurance Information	
HealthCare.gov and COVID-19	<p>All Marketplace plans cover treatment for pre-existing medical conditions and can't terminate coverage due to a change in health status, including diagnosis or treatment of COVID-19.</p> <p>You should check with your health insurance company for your specific benefits and coverage policy, regardless of who your provider is.</p> <p>If you lost your job, experienced hours reduction or were furloughed, you may qualify for a Special Enrollment Period and could be eligible for coverage through HealthCare.gov. Visit: https://www.healthcare.gov/screener/.</p> <p>If you can't pay premiums because of COVID-related hardship, check with your insurance company about extending your premium payment deadline or ask if they will delay terminating your coverage if you can't pay your premiums.</p> <p>https://www.healthcare.gov/coronavirus/</p>
America's Health Insurance Plans (AHIP)	<p>AHIP has created a list of health insurance providers and each of their responses to Coronavirus. You can search by provider to see what kind of measures your provider may have taken to ease any burden on those who are sick, have been tested or are otherwise experiencing hardship because of COVID-19.</p> <p>https://www.ahip.org/health-insurance-providers-respond-to-coronavirus-covid-19/</p>
National Flood Insurance Program (NFIP)	<p>The National Flood Insurance Program aims to reduce the impact of flooding on private and public structures. It does so by providing affordable insurance to property owners and by encouraging communities to adopt and enforce floodplain management regulations.</p>

	https://www.fema.gov/national-flood-insurance-program
National Association of Insurance Commissioners	816-783-8500 www.naic.org
Charitable Organizations (Recommended by FEMA)	
American Red Cross Disaster Donations	1-800-435-7669 to Donate by phone www.redcross.org
Red Cross of Houston	713-526-8300; 2700 Southwest Freeway https://www.redcross.org/local/texas/gulf-coast/about-us/locations/houston.html
Catholic Charities in Houston-Galveston	713-526-4611; 2900 Louisiana Street 713-227-9981; 326 South Jensen Drive www.catholiccharities.org
Salvation Army Disaster Relief	713-752-0677; 1500 Austin Street, Houston, TX www.salvationarmyhouston.org
Federal Agencies and Resources	
U.S. Government's Official Web Portal	This web portal has links to many agencies and programs. 1-844-USA-GOV1 (1-844-872-4681) http://www.usa.gov/
Federal Disaster Unemployment Assistance (through the U.S. Department of Labor)	The Disaster Unemployment Assistance (DUA) program provides temporary benefits to people who, due to a major disaster, lost or had their employment or self-employment interrupted. 1-877-US2-JOBS (1-877-872-5627) TTY 1-877-889-5627 https://www.disasterassistance.gov/get-assistance/forms-of-assistance/4466 .
Equal Employment Opportunity Commission	1-800-669-4000 Hearing Impaired: 1-800-669-6820

	<p>info@ask.eeoc.gov (include zip code and/or city and state so that your email will be sent to the appropriate office)</p> <p>www.eeoc.gov</p>
Social Security Administration	<p>1-800-772-1213 TTY 1-800-325-0778</p> <p>www.ssa.gov</p> <p>COVID-19: Access the Administration's guide for Economic Impact Payments for SSI recipients here: https://www.ssa.gov/coronavirus/assets/materials/economic-impact-payments-for-social-security-and-ssi-recipients.pdf.</p> <p>More information at https://www.ssa.gov/coronavirus/.</p>
United States Postal Service	<p>General: 1-800-ASK-USPS (1-800-275-8777) www.usps.gov</p> <p>USPS is reminding customers to complete change-of-address requests, especially if they expect to be out of their homes for extended periods.</p>
U.S. Department of Health & Human Services (Medicare)	<p>1-800-MEDICARE (633-4227) TTY: 1-877-486-2048</p> <p>http://www.cms.gov/</p>
Veterans Affairs	<p>1-844-MyVA311 (1-844-698-2311)</p> <p>www.va.gov</p> <p>VA Crisis Line (available 24/7): 1-800-273-8255 then press 1 Text: 838255</p>
Department of Education	<p>1-800-872-5327</p> <p>www.ed.gov</p>
U.S. Department of Housing and Urban Development (HUD)	<p>Fraud Line: 1-800-347-3735 Fair Housing: 1-800-347-3739</p> <p>www.hud.gov</p> <p>Ft. Worth Regional Office: 1-817-978-5600</p> <p>Houston Field Office: 1-713-718-3199</p>

Internal Revenue Service	<p>1-800-829-1040</p> <p>www.irs.gov</p>
Federal Citizen Information Center (f/k/a Federal Consumer Information Center)	<p>The U.S. Government Publishing Office Pueblo Distribution Center is a trusted one-stop source for answers to questions about consumer problems and government services. The Pueblo.GPO.gov website is where consumers can go to find information and order publications on a variety of topics from the federal government.</p> <p>Questions Only: 719-295-2675</p> <p>https://pueblo.gpo.gov/Publications/PuebloPubs.php</p>
U.S. Immigration and Customs Enforcement (ICE)	<p>Report Crimes: 1-866-347-2423</p> <p>Detainee-Related Information: 1-888-351-4024</p> <p>www.ice.gov</p>
Department of Homeland Security	<p>Main: 1-202-282-8000</p> <p>Comments: 1-202-282-8495</p> <p>www.dhs.gov</p>
Small Business Administration (SBA)	<p>The Small Business Administration (SBA) offers low-interest, long-term disaster loans to small businesses of all sizes, private non-profit organizations, homeowners, and renters to repair or replace uninsured/underinsured disaster damaged property.</p> <p>Loan amounts and terms are set by SBA and are based on each applicant's financial condition.</p> <p>Apply online at www.sba.gov, in person at a FEMA Disaster Recovery Center, or by mail.</p> <p>www.sba.gov https://disasterloan.sba.gov/ela/information/Index</p> <p>Call 1-800-659-2955 or email at disastercustomerservice@sba.gov</p>
COVID-19 CARES Act of 2020 and SBA Coronavirus Relief Options	<p>Following the outbreak of Coronavirus (COVID-19), the President signed into law the CARES Act, which contains \$376 billion in relief for American workers and small businesses.</p>

	<p>The CARES Act established several new temporary programs to address the COVID-19 outbreak and its effect on businesses. These programs include:</p> <ul style="list-style-type: none"> - SBA Loan Forgiveness - Paycheck Protection Program (PPP) - Economic Injury Disaster Loan Advance (EIDL) - SBA Express Bridge Loans - SBA Debt Relief <p>SBA Coronavirus Relief Page: https://www.sba.gov/funding-programs/loans/coronavirus-relief-options</p>
<p>SBA Loan Forgiveness</p>	<p>The CARES Act includes forgiveness of loan payments for most existing SBA loans. Once implemented, you will not have to make your next six months of loan payments.</p> <p>Small business owners participating in the 7(a), Community Advantage, 504, or microloan programs are all eligible.</p> <p>No action is required to receive this benefit. Payments due during the six-month period will never have to be repaid.</p> <p>https://www.coronavirus.gov/smallbusiness/.</p>
<p>SBA Paycheck Protection Program (PPP)</p>	<p>The PPP is a loan designed to provide incentive for small businesses to keep their workers on the payroll.</p> <p>SBA will forgive loans if all employees are kept on the payroll for eight weeks and the money is used for payroll, rent, mortgage interest, or utilities.</p> <p>Apply through any existing SBA 7(a) lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating.</p> <p>SBA PPP webpage: https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program</p>
<p>SBA Economic Injury Disaster Loan Advance (EIDL)</p>	<p>The Economic Injury Disaster Loan and Advance (EIDL) is designed to provide economic relief to businesses that are currently experiencing a temporary loss of revenue. Small business owners are able to apply for an EIDL advance of up to \$10,000—none of which will have to be repaid.</p> <p>As of early May, 2020, <u>only agricultural businesses are eligible to apply for relief under the EIDL program</u>, due to limitations in funding and the unprecedented submission of applications already received. To check the status of which types of</p>

	<p>businesses are eligible to apply for assistance through EIDL, visit https://www.sba.gov/page/disaster-loan-applications.</p> <p>Disaster Loan FAQ page: https://disasterloanassistance.sba.gov/s/faq</p>
SBA Express Bridge Loans	<p>Express Bridge Loan Pilot Program allows small businesses who currently have a business relationship with an SBA Express Lender to access up to \$25,000 quickly. If a small business has an urgent need for cash while waiting for decision and disbursement on an EIDL loan, they may qualify for an SBA Express Disaster Bridge Loan.</p> <p>These loans are available faster than EIDL loans, but will be repaid in full or in part by proceeds from the EIDL loan.</p> <p>Visit https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/sba-express-bridge-loans.</p>
SBA Debt Relief	<p>As part of its coronavirus debt relief efforts, the SBA will pay 6 months of principal, interest, and any associated fees that borrowers owe for all current 7(a), 504, and Microloans in regular servicing status as well as new 7(a), 504, and Microloans disbursed prior to September 27, 2020.</p> <p>Visit https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/sba-debt-relief.</p>
Bankruptcy	<p>The CARES Act raised the small business bankruptcy debt ceiling to \$7,500,000. Small businesses looking to file bankruptcy rely on Subchapter V of Chapter 11 of the Bankruptcy Code. To qualify, total debts of a business previously had to be less than \$2,725,625.</p> <p>For more information, visit: https://www.natlawreview.com/article/inside-cares-act-changes-to-bankruptcy-code-under-cares-act</p> <p>For businesses considering bankruptcy, please consult with an attorney (see “Legal Services” below).</p>
Credit Bureaus	
Equifax	1-866-548-7878
Experian	1-888-397-3742
Trans Union	1-800-916-8800

19.2 Texas Disaster Assistance

General Assistance																					
Texas Hurricane Center	<p>https://gov.texas.gov/hurricane</p> <p>Houston Emergency Updates Call 3-1-1 or 1-713-884-3131</p> <p>Road Conditions 1-800-452-9292 https://drivetexas.org</p> <p>Roadside Assistance 1-800-525-5555</p>																				
Emergency Housing																					
Texas Department of Housing & Community Affairs (search low income housing by city or county)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Disaster Relief</td> <td style="text-align: right; padding: 5px;">1-877-541-7905</td> </tr> <tr> <td style="padding: 5px;">Emergency & Homeless Services (short term rent help, eviction relief, and legal aid services)</td> <td style="text-align: right; padding: 5px;">1-800-525-0657</td> </tr> <tr> <td style="padding: 5px;">Foreclosure Mitigation</td> <td style="text-align: right; padding: 5px;">1-888-995-4673</td> </tr> <tr> <td style="padding: 5px;">Home Repair Assistance</td> <td style="text-align: right; padding: 5px;">1-800-525-0657</td> </tr> <tr> <td style="padding: 5px;">Loan Servicing</td> <td style="text-align: right; padding: 5px;">1-800-298-4013</td> </tr> <tr> <td style="padding: 5px;">Manufactured Housing</td> <td style="text-align: right; padding: 5px;">1-800-500-7074</td> </tr> <tr> <td style="padding: 5px;">Reduced Rent Apartments</td> <td style="text-align: right; padding: 5px;">1-800-525-0657</td> </tr> <tr> <td style="padding: 5px;">Utility Bill Payment Help</td> <td style="text-align: right; padding: 5px;">1-877-399-8939 1-877-541-7905</td> </tr> <tr> <td style="padding: 5px;">Other Help</td> <td style="text-align: right; padding: 5px;">1-877-541-7905</td> </tr> <tr> <td colspan="2" style="padding: 5px;"> <p>Headquarters: Call weekdays 8 a.m. to 5 p.m. 1-512-475-3800 1-800-525-0657</p> <p>Email: info@tdhca.state.tx.us</p> </td> </tr> </table>	Disaster Relief	1-877-541-7905	Emergency & Homeless Services (short term rent help, eviction relief, and legal aid services)	1-800-525-0657	Foreclosure Mitigation	1-888-995-4673	Home Repair Assistance	1-800-525-0657	Loan Servicing	1-800-298-4013	Manufactured Housing	1-800-500-7074	Reduced Rent Apartments	1-800-525-0657	Utility Bill Payment Help	1-877-399-8939 1-877-541-7905	Other Help	1-877-541-7905	<p>Headquarters: Call weekdays 8 a.m. to 5 p.m. 1-512-475-3800 1-800-525-0657</p> <p>Email: info@tdhca.state.tx.us</p>	
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	www.tdhca.state.tx.us
Child Support Checks	
Texas	Texas Attorney General 1-800-252-8014 http://www.oag.state.tx.us/cs/index.shtml
Unemployment Assistance	
Disaster Unemployment Assistance (DUA)	Disaster Unemployment Assistance (DUA) provides unemployment benefits for individuals who lost their jobs or self-employment or who are no longer working as a <i>direct result</i> of a major disaster or for which a disaster assistance period is declared, and who applied but are not eligible for regular unemployment benefits. http://www.twc.state.tx.us/jobseekers/disaster-unemployment-assistance Texas Workforce Commission Tele-Center: Call weekdays 8 a.m. to 6 p.m. 1-800-939-6631
Insurance Information	
Texas Department of Insurance	Texas Department of Insurance Consumer Help Line Call 8 a.m. to 5 p.m. 1-800-252-3439 https://www.tdi.texas.gov/ COVID-19 Information: https://www.tdi.texas.gov/news/2020/coronavirus-updates.html COVID-19 FAQ, including where health insurance may be purchased, will plans cover COVID testing, how to submit claims for COVID tests, etc.: https://www.tdi.texas.gov/news/2020/coronavirus-faqs.html
Texas Windstorm Insurance Association	Available 24/7 Main: 1-800-788-8247 https://www.twia.org/
Legal Services	
State Bar of Texas	Main Switchboard: 1-800-204-2222 https://www.texasbar.com/

	<p>Legal Hotline: 1-800-504-7030</p> <p>Lawyer Referral: Call weekdays 8:30 a.m. to 4:30 p.m. 1-800-252-9690</p>
Houston Bar Association	<p>LegalLine</p> <p>1-713-759-1133</p> <p>http://www.hba.org</p>
Lone Star Legal Aid	<p>Lone Star Legal Aid serves 72 counties in Texas and four in Arkansas, an area that covers one-third of the state of Texas, including almost 60,000 square miles from Texarkana to the Louisiana-Texas Gulf Coast state-line, down to Matagorda Bay, and four counties in southwest Arkansas.</p> <p>http://www.lonestarlegal.org/</p> <p>Houston Office: 1-713-652-0077; 1-800-733-8394</p> <p>Beaumont Office: 1-409-835-4971; 1-800-365-1861</p> <p>Galveston Office: 1-409-763-0381; 1-800-551-3712</p>
Texas Rio Grande Legal Aid	<p>Servicing South, Central, and West Texas.</p> <p>Disaster Legal Aid: 1-866-757-1570</p> <p>http://www.trla.org/</p>
Legal Aid of North West Texas	<p>1-888-529-5277</p> <p>https://internet.lanwt.org/en-us</p>
Disability Rights Texas	<p>1-800-252-9108</p> <p>http://www.disabilityrightstx.org/</p>
Aid to Victims of Domestic Abuse	<p>713-224-9911</p> <p>http://avda-tx.org/</p>
American Civil Liberties Union (Houston)	<p>713-942-8146</p> <p>https://www.aclutx.org</p>

American Civil Liberties Union (Austin)	512-478-7300
Family Violence Legal Hotline	1-800-374-HOPE (4673) http://www.texasadvocacyproject.org/
Real Estate and Housing re: Coronavirus	
Texas REALTORS	<p>Texas REALTORS has a FAQ page with information regarding leasing and property management. There are resources for residential renters and landlords.</p> <p>https://www.texasrealestate.com/about-us/newsroom/coronavirus-faqs/coronavirus-faqs-leasing-property-mangement/</p> <p>The CARES Act puts a moratorium on residential evictions; there is no parallel provision for commercial leases.</p> <p>For more information, visit: https://crsreports.congress.gov/product/pdf/IN/IN11320 and https://www.texasrealestate.com/wp-content/uploads/COVID-19LateFeesCARESAct.pdf</p>
Legal Services (Bexar County)	
San Antonio Bar Association	(210) 227-8822 http://www.sanantoniobar.org/
San Antonio Young Lawyers Association	www.sayla.org
Legal Services (Collin County)	
Plano Bar Association	972-424-6113 www.planobar.com
Legal Services (Dallas County)	

Dallas Bar Association	
Dallas Bar Association	(214) 220-7400 http://www.dallasbar.org/
Dallas Association of Young Lawyers	214-969-7675 www.dayl.com
Dallas Criminal Defense Lawyers Association	http://dccla.com/
North Dallas Bar Association	972-980-0472 http://attorneys-dallas.com/north-dallas-bar-association/
Legal Services (El Paso County)	
El Paso Bar Association	915-532-7052 https://elpasobar.com/
Harris County	
Houston Bar Association	713-759-1133 www.hba.org
Houston Young Lawyers Association	713-224-4952 www.hyla.org
Houston Bar Lawyer Referral Service	713-237-9429/1-800-289-4577 https://hlrs.org/
Harris County Criminal Lawyers Association	713-498-9649 www.hccla.org
Dispute Resolution Center/Neighborhood Justice Center	713-755-8274 / 713-274-7100 https://drc.harriscountytexas.gov/en-usa/Pages/Default.aspx
Harris County Domestic Relations	713-274-7300 http://www.dro.hctx.net/

Harris County DA's Office	Main: 713-274-5800 http://app.dao.hctx.net/ Consumer Fraud 713-274-5555 Family Violence Unit 713-274-0212 General Intake and Information 713-274-5800
South Texas College of Law Legal Clinic	713-646-2990 https://www.stcl.edu/lawclinics/index.html
Texas Southern University	Thurgood Marshall School of Law Legal Clinic 713-313-7275 http://www.tsulaw.edu/legal_clinic/index.html The Earl Carl Institute for Legal and Social Policy, Inc. 713-313-4455 http://www.tsulaw.edu/centers/ECL/
University of Houston Legal Aid Clinic	713-743-2100 http://www.law.uh.edu/clinic/
Legal Services (Jefferson County)	
Jefferson County Bar Association	1-409-835-8647 www.jcba.org
Legal Services (Nueces County)	
Corpus Christi Bar Association	1-361-883-4022 www.corpusbar.com
Legal Services (Tarrant County)	
Tarrant County Bar Association	817-338-4092

	www.tarrantbar.org LegalLine Call weekdays 6 p.m. to 8 p.m. second & fourth Thursday of each month 1-817-335-1239
Arlington Bar Association	817-277-3113 http://arlingtonbarassociation.org/
Texas Legal Services Center (Elderly Issues)	1-800-622-2520 http://www.tlsc.org/
Legal Services (Travis County)	
Austin Bar Association	512-472-0279 www.austinbar.org
Lawyer Referral Service of Central Texas	512-472-8303 http://www.austinlrs.com/
Texas Attorney General	
Main Agency Switchboard	512-463-2100 www.oag.state.tx.us
Consumer Complaints (e.g., price gouging)	1-800-621-0508
Public Information & Assistance	1-800-252-8011 or 512-475-4413
Consumer protection hotline	1-800-621-0508
Child Support (to apply for services)	1-800-252-8014 512-460-6000 Weekdays 8:30 am – 4:30 pm
Other State Agencies & Resources	

Texas Department of Assistive & Rehabilitative Services	1-800-628-5115 https://twc.texas.gov/news/departments-assistive-rehabilitative-services-program-transition
Texas Department of Mental Health	1-512-776-7111 / 1-888-963-7111 http://www.dshs.state.tx.us/mental-health/
Texas Department of State Health Services (including mental health)	1-512-776-7111 / 1-888-963-7111 http://www.dshs.state.tx.us/
Texas Department of Housing & Community Affairs	512-475-3800 / 1-800-525-0657 www.tdhca.state.tx.us
Department of Licensing & Regulation	512-463-6599 / 1-800-803-9202 https://www.tdlr.texas.gov/
Department of Public Safety	512-424-2000 – Austin Headquarters www.txdps.state.tx.us DPS Driver License 512-424-2600 Customer Service
Division of Worker's Compensation	1-800-252-7031 https://www.tdi.texas.gov/wc/index.html
Texas Department of Education	512-463-9734 www.tea.state.tx.us
Texas Health and Human Services – Aging	1-855-937-2372 (Headquarters – Austin) https://hhs.texas.gov/services/aging

19.3 Services by Affinity Group

Alcoholics Anonymous	
Houston Office	713-686-6300
Austin Office	512-444-0071

Dallas Office & Help Line	214-887-6699
San Antonio Office & Help Line	210-828-6235
Immigration Services	
Catholic Charities of the Archdioceses of Galveston-Houston	713-526-4611 http://www.catholiccharities.org/
Central American Resource Center	713-665-1284 carecenhouston@gmail.com
Casa Juan Diego	713-869-7376 http://cjd.org/
Immigration Counseling Center	713-953-0047 icci@peoplepc.com
Family, Women, and Youth Services	
Al-Anon Family Groups (Families coping with alcoholism)	713-683-7227 http://www.houstonalanon.org/
Association for the Advancement of Mexican-Americans, Inc. (AAMA)	713-967-6700 http://www.aama.org/
Avance Family Support & Education Program (AAMA)	713-812-0033 http://www.avancehouston.org/
Big Brothers Big Sisters of Greater Houston	888-887-2447 http://www.bbbstx.org/
Casa de Esperanza/Bilingual	713-529-0639 https://www.casahope.org/

Community Family Center/Bilingual	713-923-2316 http://www.communityfamilycenters.org/index.php
Child Advocates, Inc.	713-529-1396 http://www.childadvocates.org/
Children Assessment Center, The	713-986-3300 http://cachouston.org/
Children’s Protective Services – Harris County Protective Services for Children and Adults	713-394-4000 http://www.hc-ps.org/
Covenant House	713-523-2231 https://www.covenanthousetx.org/
DePelchin Children’s Center	713-730-2335 http://www.depelchin.org/
Escape Family Resource Center	713-942-9500 http://www.learntoparent.org/
Family Life Ministry	713-741-8720 http://www.familylifeministryhouston.org/
Family Services of Greater Houston	713-861-4849 http://www.familyhouston.org/
Family Time Crisis Hotline	281-446-2615 http://familytimeecc.org/
Jewish Community Center	713-729-3200 http://www.erjcchouston.org/
Jewish Family Service	713-667-9336 http://www.jfshouston.org/

Justice for Children	713-225-4357 http://justiceforchildren.org/
Learning Support Center at Texas Children’s Hospital	832-822-3700 - Return Appointments 832-822-1900 - New Patients http://www.texaschildrens.org/departments/psychology/our-team
Aids to Victims of Domestic Abuse	713-224-9911 http://avda-tx.org/
S.H.A.P.E. Community Center	713-521-0629 http://www.shape.org/
University of Texas Psychiatric Services	713-741-5000 https://hcpc.uth.edu/
University of Houston-Parent Education Project	713-743-5491 http://www.uh.edu/education/pep/
University of Houston-Psychology Research & Services Center	713-743-8600 http://www.uh.edu/class/psychology/clinics/
Texas Crime Victims Clearinghouse (Victim Services Division)	1-800-848-4284 https://www.tdcj.state.tx.us/divisions/vs/index.html
Women’s Hospital of Texas Education Department	713-790-1234 http://womanshospital.com/
Bay Area Turning Point	281-286-2525 http://www.bayareaturningpoint.org/
The Bridge Over Troubled Waters	713-473-2801 - 24-Hour Emergency Hotline 713-472-0753 – Administration

	http://www.thebridgeovertroubledwaters.org/
Brazoria County, Women's Center of	979-849-9553 http://www.womenscenterbc.com/
Fort Bend County Women's Center	281-344-5750 / Crises hotline: 281-342-4357 http://www.fortbendwomenscenter.org/
Houston Area Women's Center	Business: 713-528-6798 Domestic Violence Hotline: 713-528-3625 Sexual Assault Hotline: 713-528-3691 http://www.hawc.org/
Montgomery County Women's Center	936-441-7273 http://mcwctx.org/
Senior Services	
Alzheimer's Association – Houston and Southeast Texas Chapter	713-314-1313 24-Hour Helpline: 800-272-3900 http://www.alz.org/texas/
AARP	1-866-227-7443 – Texas Office http://www.aarp.org/
American Cancer Society	1-800-227-2345 http://www.cancer.org
American Diabetes Association	1-800-342-2383 / 713-977-7706 (Central South Texas) http://www.diabetes.org/
American Heart Association	832-918-4000 (Houston Office) / 1-800-242-8721 http://www.heart.org/
Houston/Harris County Area Agency on Aging	832-393-4301 http://www.houstontx.gov/health/Aging/index.html

Interfaith Ministries for Greater Houston	713-533-4900 https://www.imgh.org/
Legal Hotline for Texans	1-800-622-2520, Option 3 https://www.tlsc.org/legalhotline
New Lifestyles – The Source for Senior Living	1-800-869-9549 Visit http://www.newlifestyles.com/ for the contact number in your area
Salvation Army - Houston Salvation Army Family Shelter Salvation Army Social Services	713-752-0677 http://www.salvationarmyhouston.org/
Senior Guidance Program of the Houston Junior Forum	713-868-1850 http://houstonjuniorforum.org
West University Place, City of Senior Services	713-662-5895 http://www.westutx.gov/220/Senior-Services
Shelter Arms Senior Services In-Home Services	713-685-6577 https://www.bakerripley.org/services/bakerripley-in-home-senior-services

19.4 Houston Area Helpful Numbers

Houston Area Helpful Numbers	
NAACP-Houston	713-526-3389 http://naacphouston.org/
Houston City Hall	713-837-0311 http://www.houstontx.gov/events/cityhall.html
Houston Health Department	832-393-5169 http://www.houstontx.gov/health/
Houston Housing Authority	713-260-0600 – Customer 713-260-0547 TTY (for the hearing impaired) http://www.housingforhouston.com/
Automobile Registration (Harris County)	713-274-8000 http://www.hctax.net/
County Clerk (Harris County)	713-755-6411 - Phone 713-274-8600 - Civil Courthouse http://www.cclerk.hctx.net/
Child Support Customer Service Center	1-800-252-8014 https://www.texasattorneygeneral.gov/cs/contact-the-child-support-division
Harris County Department of Education	713-694-6300 http://www.hcde-texas.org/
Harris County District Clerk	832-927-5800 http://www.hcdistrictclerk.com/Common/Default.aspx
Harris County Offices (Main Switchboard)	713-755-5000

	http://www.harriscountytexas.gov/phonedirectory.aspx
Marriage License	713-755-6411 https://www.cclerk.hctx.net/PersonalRecords.aspx#Mal
Probate Clerk's Office	Visit http://www.co.harris.tx.us/probate/ to determine the appropriate probate court
Harris County Veterans Services Office	281-876-6600 http://www.vso.hctx.net/
Texas Department of State Health Services (including mental health)	1-888-963-7111 – Toll Free 512-776-7111 – Main http://www.dshs.state.tx.us/mental-health/
Texas Department of Insurance	1-800-578-4677 – Main 1-800-252-3439 – Consumer Help Line http://www.tdi.texas.gov/
Texas Workforce Commission (Houston Office)	800-558-8321 http://www.twc.state.tx.us/
Texas Department of Assistive & Rehabilitative Services (DARS) – Now with Texas Workforce Commission or Texas Health and Human Services Commission	1-800-628-5115 https://twc.texas.gov/news/departments-assistive-rehabilitative-services-program-transition#overview
Texas Department of Insurance – Division of Worker's Compensation	1-800-252-7031, Option 1 https://www.tdi.texas.gov/wc/index.html
Texas Workers Compensation Health & Safety Hotline	1-800-252-7031, Option 2 https://www.tdi.texas.gov/wc/dwcccontacts.html
Texas Veterans Commission	1-800-273-8255 – Crisis Hotline 512-463-6564 – Austin Headquarters https://www.tvc.texas.gov/
Workforce Solutions	713-627-3200

	http://wrksolutions.com/
Federal Courts, Southern District of Texas	713-250-5500 (Houston Division) http://www.txs.uscourts.gov/
Municipal Courts	http://www.houstontx.gov/courts/ General ticket and court information 713-837-0311 Administration Department 713-247-5479 Judicial Department 713-247-5464
Small Claims Courts	Visit http://www.jp.hctx.net/default.htm to determine the appropriate justice of the peace court.
Jail Division Public Information Website	713-755-8430 – 701 N. San Jacinto Street 713-755-1188 – 711 N. San Jacinto Street 714-755-7484 - 1200 Baker Street 713-755-2400 - 1307 Baker Street https://www.harriscountyso.org/JailInfo/Default.aspx
Non-Emergency number (Harris County Sheriff)	713-221-6000 http://www.harriscountyso.org/AboutUs/ContactUs/Contact.aspx
Jury Summons Information for Harris County	713-755-6392 (after 10 am) https://www.hcdistrictclerk.com/common/juror/Secure/jurorsearch.aspx
Texas Department of Criminal Justice	512-463-9988 (Austin) Visit http://www.tdcj.state.tx.us/ to determine the appropriate division.
Harris County Community Supervision & Corrections Department	713-755-2700 http://www.harriscountytexas.gov/cscd/

Traffic Ticket Info/Municipal Courts	713-837-0311 http://www.houstontx.gov/courts/ticket_information.html http://www.jp.hctx.net/traffic/default.htm
Bankruptcy Court, Southern District of Texas	713-250-5500 http://www.txs.uscourts.gov/offices/houston-division
Better Business Bureau (Houston)	713-868-9500 http://www.bbb.org/houston/
Texas Department of Insurance Consumer Help Line	1-800-252-3439 http://www.tdi.texas.gov/pubs/consumer/cb022.html
National Association of the Remodeling Industry-Houston Chapter	713-955-6210 http://www.narihouston.com/
U.S. Consumer Product Safety Commission/Bilingual	1-800-638-2772 http://www.cpsc.gov/
Emergency and Crisis Intervention Services	
Crime Stoppers	713-222-TIPS (8477) http://www.crime-stoppers.org/
Additional Assistance	
Certified Public Accountant Referral (Houston CPA Society)	713-622-7733 https://www.houstoncpa.org/homepage
Chamber of Commerce, Greater Houston Partnership	713-844-3600 https://www.houston.org/
City of Houston	Check http://www.houstontx.gov for updated information on storm clean up and dial 3-1-1 with questions

Greater Houston Fair Housing Center – Bilingual Intake for housing discrimination matter	713-641-3247 http://greaterhoustonfairhousingcenter.cfsites.org/index.php
Harris County	Check http://harrisrecovery.org/ for the latest information.
Harris County Medical Society	713-524-4267 http://www.hcms.org/home/
Houston Apartment Association	713-595-0300 https://www.haaonline.org/
Houston Association of Realtors	713-629-1900 http://www.har.com/
Univision, KXLN-TV Spanish News Station	713-662-4545 http://www.univision.com/
Library Public Houston (General)	832-393-1313 (Central Library, Jesse H. Jones Building) http://houstonlibrary.org/
Harris County Law Library	713-755-5183 http://www.harriscountylawlibrary.org/
Federal Public Defenders	713-718-4600 (Houston) http://www.fpdsdot.org/en/
Copies of State & Federal Laws	512-463-1722 / 1-844-829-2843 www.capitol.state.tx.us http://www.sll.texas.gov/
Harris County Tax Assessor & Collector	713-274-8000 http://www.hctax.net/

Solid Waste Management Department	Solid Waste Management is responsible for storm debris collection in the city of Houston. Visit http://www.houstontx.gov/solidwaste/ or call 3-1-1 for debris drop-off locations and pick-up information. For instructions on separating your debris for removal, see http://www.houstontx.gov/solidwaste/debris_08302017.html .
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19.5 Beaumont Area Helpful Numbers

Beaumont Area Helpful Numbers	
American Red Cross (Beaumont Chapter)	409-832-1644 https://www.redcross.org/local/texas/gulf-coast/about-us/locations/southeast-deep-east.html
Buckner Children & Family Services	1-844-275-6234 http://buckner.org/
Catholic Charities	409-924-4400 http://www.catholiccharitiesbmt.org/
Communities In Schools, Southeast Texas, Inc.	409-951-1810 http://cisset.org/
Family Services of Southeast Texas	409-883-2668 http://www.westngthenfamilies.org/
Goodwill Industries of Southeast Texas, Inc.	409-838-9911 http://www.goodwilltxla.org/
Nutrition & Services for Seniors – Meals on Wheels of Jefferson and Hardin Counties	409-892-4455 http://seniormeals.org/
Some Other Place	409-832-7976

	http://www.someotherplacebeaumont.com/
The Salvation Army of Beaumont	409-896-2361 http://www.salvationarmytexas.org/
United Way of Beaumont and North Jefferson County	409-835-4575 http://www.uwbmt.org/
Beaumont Convention & Visitors Bureau	409-880-3749 http://www.beaumontcvb.com/
SE Texas Food Bank	409-839-8777 http://setxfoodbank.org/
Blood and Plasma Research, Inc.	409-835-7268 / 409-444-2299 http://bloodandplasma.com/
LifeShare Blood Centers	http://www.lifeshare.org/