

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



*Prepared by:*

State Bar of Texas, [www.texasbar.com](http://www.texasbar.com)

Updated in 2023 by  
Sidley Austin, LLP  
Houston Immigration Legal Services Collaborative  
Legal Aid of NorthWest Texas  
Lone Star Legal Aid  
Texas RioGrande Legal Aid  
Disability Rights Texas

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# SIDLEY

HOUSTON IMMIGRATION  
LEGAL SERVICES COLLABORATIVE



Legal Aid of North West Texas



LONE STAR  
LEGAL AID

**TRLA**  
Texas RioGrande Legal Aid

Disability *Rights*  
TEXAS

## **NOTICE TO ATTORNEYS**

The preparation of these materials is a collaborative project of the State Bar of Texas; Sidley Austin, LLP; the Houston Immigration Legal Services Collaborative; Legal Aid of NorthWest Texas; Lone Star Legal Aid; Texas RioGrande Legal Aid; and Disability Rights Texas and is 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 the Legal Access Division at [probonotx@texasbar.com](mailto:probonotx@texasbar.com). Please check frequently the websites of the State Bar of Texas ([www.texasbar.com](http://www.texasbar.com)), Pro Bono Texas ([www.probonotexas.org](http://www.probonotexas.org)), and TexasLawHelp ([www.TexasLawHelp.org](http://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 disaster survivors, whether in person or remotely, please visit the State Bar of Texas Pro Bono Opportunity Portal at [pbtx.joinpaladin.com](http://pbtx.joinpaladin.com) or fill out the online form that can be found on the State Bar of Texas website at [www.texasbar.com](http://www.texasbar.com). Alternatively, you can contact the Legal Access Division of the State Bar of Texas at 1-512-427-1855, 1-888-281-6511, or [probono@texasbar.com](mailto:probono@texasbar.com).

## HELPFUL DISASTER RELIEF WEBSITES (2023)

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.

Dallas Volunteer Attorney Program	<a href="https://dallasvolunteerattorneyprogram.org">dallasvolunteerattorneyprogram.org</a>
Federal Emergency Management Agency	<a href="https://www.fema.gov">www.fema.gov</a>
Houston Volunteer Lawyers	<a href="https://www.makejusticehappen.org">www.makejusticehappen.org</a>
Insurance Information Institute	<a href="https://www.iii.org">www.iii.org</a>
LawHelp—Texas	<a href="https://www.TexasLawHelp.org">www.TexasLawHelp.org</a>
Legal Aid of NorthWest Texas	<a href="https://www.lanwt.org">www.lanwt.org</a>
Lone Star Legal Aid	<a href="https://www.lonestarlegal.org">www.lonestarlegal.org</a>
Advocates for Disaster Justice	<a href="https://www.advocatesfordisasterjustice.org">www.advocatesfordisasterjustice.org</a>
Probono.net	<a href="https://www.probono.net">www.probono.net</a>
San Antonio Legal Services Association	<a href="https://www.sa-lsa.org">www.sa-lsa.org</a>
Social Security Administration	<a href="https://www.ssa.gov/emergency">www.ssa.gov/emergency</a>
State Bar of Texas	<a href="https://www.texasbar.com">www.texasbar.com</a>
State Bar of Texas Pro Bono Opportunity Portal	<a href="https://app.joinpaladin.com/pbtx">app.joinpaladin.com/pbtx</a>
Texas Governor’s Office	<a href="https://gov.texas.gov">gov.texas.gov</a>
Texas Free Legal Answers	<a href="https://texas.freelegalanswers.org">texas.freelegalanswers.org</a>
Texas Legal Services Center	<a href="https://www.tlsc.org">www.tlsc.org</a>
Texas RioGrande Legal Aid	<a href="https://www.trla.org">www.trla.org</a>
U.S. Health & Human Services	<a href="https://www.hhs.gov">www.hhs.gov</a>
U.S. Internal Revenue Service	<a href="https://www.irs.gov">www.irs.gov</a>
U.S. Postal Service	<a href="https://www.usps.com">www.usps.com</a>
Volunteer Legal Services of Central Texas	<a href="https://www.vlsoct.org">www.vlsoct.org</a>

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## **1.0 INTRODUCTION**

### **1.1 Overview of The 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 was 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.

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

**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 this [website](#).**

**NOTE: If you have reason to believe that the client is in danger of dying by suicide, you may reveal confidential information in order to prevent this. Disclosure is allowed only to the extent necessary to obtain assistance. Below are some available resources:**

- **Suicide Prevention Line: 988**
- **Texas Lawyer Assistance Program: 1-800-343-8527**
- **[Mental Health Crisis Services by County](#)**

**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](#). See also 19.0 Resources & Referral Guide.

LSC Programs (Texas)	
<a href="#">Lone Star Legal Aid</a> 1-800-733-8394	East Texas (76 counties, including Houston, Galveston, Texarkana, Beaumont, and Waco)
<a href="#">Legal Aid of NorthWest Texas</a> Disaster-Related Questions: 1-817-339-5391	North and West Texas (114 counties, including Dallas/Fort Worth, Midland/Odessa, and the Panhandle)
<a href="#">Texas RioGrande Legal Aid</a> 1-956-996-TRLA (8752)	South, Central, and West Texas (68 counties, including Austin, San Antonio, El Paso, and the Valley)
<a href="#">Texas Disaster Legal Help</a>	A collaboration between Lone Star Legal Aid, Legal Aid of NorthWest Texas, and Texas Rio Grande Legal Aid designed to improve the mobilization of pro bono volunteers during and in the immediate aftermath of a disaster; leveraging technology to meet legal needs in emergencies more effectively. Through the Pro Bono Portal, volunteers have access to educational materials, training, and statewide volunteer opportunities.
Legal Aid and Bar Associations	
<a href="#">Dallas Volunteer Attorney Program</a> 1515 Main St. Dallas, Texas 75201 1-214-243-2236	Dallas metropolitan area, joint program of the Dallas Bar Association and Legal Aid of NorthWest Texas
<a href="#">Disability Rights Texas Headquarters/Central Texas Regional Office</a> 2222 West Braker Lane Austin, Texas 78758 1-512-454-4816 1-800-252-9108 (Intake for New Callers) 1-866-362-2851 (Intake for Individuals who use sign language)	Statewide, advocates legal rights of those with disabilities
<a href="#">Houston Volunteer Lawyers</a> 1111 Bagby, Suite FLB 300 Houston, Texas 77002 1-713-228-0735	Houston metropolitan area, the service arm of the Houston Bar Association

E-mail: <a href="mailto:info@hvlp.org">info@hvlp.org</a> <a href="#">Legalline</a>	
<a href="#">Texas Legal Services Center</a> 1920 E. Riverside Dr. Suite A-120, #501 Austin, Texas 78741 1-512-477-6000	Statewide
<a href="#">Volunteer Legal Services of Central Texas</a> 8001 Centre Park Dr., Ste 120 Austin, Texas 78752 1-512-476-5550	Travis, Bastrop, Hays Counties, non-profit with a Pro Bono network to being access to the civil legal system

## 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:

- **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.
- **Individual Advice or Counsel.** Advise on a specific legal matter the individual survivor is experiencing.
- **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.
- **Extended Representation.** Some survivors will need longer-term direct legal representation to assist with their recovery or ancillary matters that were impacted by the disaster. The types of legal issues are different depending on the stage of recovery. For example, the survivor may need assistance with a FEMA Appeal when their application is denied, including resolving the cause of the denial (e.g., title clearing). Another example, clients who are displaced due to the disaster may need assistance with child custody modifications. See 1.6, Legal Needs After a Disaster Timeline.

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

- Shelter
- Disaster recovery center (DRC)
- Phone banks
- Legal advice clinics
- 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:

- emergency assistance;

- insurance claims (life, property, medical, etc.);
- lessor-lessee matters, including eviction defense;
- homeowner and other housing problems;
- home repair contracts, including contractor fraud;
- consumer protection matters, remedies, and procedures;
- disaster-related unemployment claims;
- mortgage foreclosure problems;
- advanced planning documents, such as wills and transfer-on-death documents;
- replacement of important legal documents destroyed in the natural disaster, such as wills, identification documents, legal permanent resident cards, and other immigration documents;
- powers of attorney;
- estate administration, including clearing title (insolvent estates) to qualify for home repair assistance;
- property tax questions;
- federal income tax questions;
- guardianships and conservatorships; and
- referrals to local or state agencies which might be of further assistance (e.g., consumer affairs).

**Practical 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, distribution of materials at recovery locations, and intake assistance.

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

As part of providing legal services, you may be asked to assist with information gathering or the intake process. The information is needed to determine eligibility for services and appropriate next steps.

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

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
- Alternate contacts, including names, address, telephone number(s), including landlines, and email addresses, who can contact the individual
- Description of losses and disaster-related problems
- Insurance information
- 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. Find more information [here](#).

#### **1.4 Practice Tips for Providing Assistance for Those Affected by Disaster**

Below 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 necessary. 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 are 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 childcare. 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 some individuals, this may be the first time that they have worked with an attorney, and their expectations can vary widely. Take the time to explain your availability to discuss their case and to explain the scope of representation and to manage their expectations of the 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 “re-live” 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 interpreter services, funded by the Language Access Fund, administered by the State Bar Legal Access Division.
- **Be Aware of Communication Preferences.** Individuals have different communication preferences between verbal or written. Some individuals may want you to explain a written document to them. Other clients may have limited reading proficiency or may not understand legal terminology, and they may not disclose this information.
- **Be Conscious of Individual Experiences with the Legal System.** Be aware that individual experiences may impact their engagement with you. For example, some individuals do not have positive experiences with the legal system and there may be an inherent distrust of anyone who works within the “system.” Alternatively, some individuals may be intimidated by attorneys.

- **Check Your Misconceptions.** Be mindful of how you perceive potential clients. Survivors will have a range of experiences and backgrounds. While it is important to meet individuals where they are, be careful not to make assumptions about where that place is.
- **Ask the Legal Aid Provider for Assistance.** The legal aid provider can assist with resolving a situation you may encounter with your client. Do not hesitate to reach out to the legal aid provider if you have a question.

## 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 at the [Red Cross](#). Click the “Get Help” tab, and then click “Contact & Locate Loved Ones.” Call 1-844-782-9441 for the free, national Restoring Family Links helpline.

## 1.6 Legal Needs After a Disaster Timeline





## 1.7 Legal Needs After a Pandemic Timeline

### Lifecycle of Civil Legal Issues Post-National Emergency (Pandemic) Declaration

#### SHORT TERM

##### HOUSING

- Execution of writs of removal (evictions)
- Utility shut-offs
- Foreclosure prevention
- Denial of subsidized housing assistance based on COVID-19 issues (or association of)
- Homeless population not being addressed and lack of access to COVID-19 services
- PHA obligations to protect and accommodate residents from and with COVID-19
- Temporary housing: hotel/motel residents being "evicted"
- Advocacy for individuals with disabilities for continued community integration rather than unreasonable institutionalization

##### ESTATE ADMINISTRATION

- Probate
- Title clearing

##### FAMILY

- Divorce
- Right of possession and access
- Emergency protective orders
- Emergency child custody modifications on CPS cases

##### SMALL BUSINESS

- Insurance claims
- Commercial lease evictions/negotiation

#### MID TERM

##### CONSUMER

- Fraud Scams
- Identity theft
- Debt collection
- Price gouging
- Bankruptcy

##### HOUSING

- Foreclosures
- Advocacy on behalf of individuals with disabilities for continued community integration rather than unreasonable institutionalization

##### ESTATE ADMINISTRATION

- Determination of heirship
- Will probate
- MERP
- Small estate affidavits
- Life insurance

##### FAMILY

- Divorce
- Domestic violence

##### REAL PROPERTY

- Property tax payments
- Exemptions

##### SMALL BUSINESS

- Bankruptcy

#### LONG TERM

##### ESTATE ADMINISTRATION

- Determination of heirship
- Will probate
- MERP
- Small estate affidavits
- Life insurance

##### TITLE CLEARING

- Deed drafting

##### REAL PROPERTY

- Property tax payments and exemptions

##### SYSTEMIC LITIGATION

- Individuals with disabilities denied access to or benefit from federal/state/local services and programs

##### CONSUMER

- Debt collection
- Bankruptcy

##### SMALL BUSINESS

- Litigation
- Bankruptcy

##### EDUCATION

- Continuation of services for IDEA or 504 students
- Continuation of programming once schools reopen
- Continued accessibility to public education



Legal Aid of NorthWest Texas



LONESTAR LEGAL AID



TEXAS LEGAL SERVICES CENTER



VOLUNTEER LEGAL SERVICES Central Texas

Leg. Adv. Paid for by the Texas Access to Justice Commission, Trish McAllister, Executive Director, 1414 Colorado, Austin, TX 78701

## **2.0 FEMA Individual & Households Program: Handling a FEMA Appeal for a Disaster Survivor**

### **2.1 Overview**

**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 (3362) (TTY number: 1-800-462-7585), online at [www.disasterassistance.gov](http://www.disasterassistance.gov), on the mobile app, or at a local Disaster Recovery Center (DRC) 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.

The Individual Assistance Program and Policy Guide (IAPPG) is the best resource for information on individual assistance programs administered by FEMA.

While FEMA has many other disaster assistance programs, this chapter will only review FEMA's Individuals and Households Program. The Individuals and Households Program (IHP) consists of both Housing Assistance (HA) and Other Needs Assistance (ONA). HA and ONA provide aid for long-term repair or replacement of homes and critical personal property.

*Small Business Administration (SBA) disaster loans*—While not a FEMA program, the SBA interacts with individual's FEMA applications and is important to understand. SBA provides low-interest, long-term disaster loans for individuals and businesses to repair/replace real and personal property, excluding property for farm businesses. Once a disaster survivor applies for FEMA assistance, they will be evaluated for an SBA disaster loan. If SBA determines that an applicant is ineligible for an SBA loan or if the loan amount is insufficient, SBA refers the applicant back to FEMA for additional consideration.

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

### **2.2 Individuals and Households Program Overview**

Under the Individuals and Households Program (IHP), Housing Assistance (HA) and Other Needs Assistance (ONA) are available. FEMA assistance is not intended to make an applicant whole. Instead, it is intended to meet basic needs and supplement disaster recovery efforts. There are different types of HA and ONA depending on the applicant's circumstances (individuals vs. businesses, homeowners vs. renters, etc.), but all applicants start with the same FEMA application. HA and ONA each have their own max award amount that is adjusted by statute each year. FEMA assistance maximums are published annually in the federal register. Home repair assistance required for accessibility does not count towards the maximum cap for disaster survivors with disabilities.

## **A.     *Housing Assistance***

Home Repair/Reimbursement is assistance provided to disaster survivors to help them make repairs to their home. FEMA awards this type of assistance if they find the survivor's home is "uninhabitable." A home is considered uninhabitable if the "dwelling...is not safe, sanitary, or fit to occupy." Safe and sanitary evaluations consider whether the occupants are subject to health risks, disaster-caused hazards, or threats due to damage caused by the declared disaster. Functionality is determined by whether an item or home is available for use for its intended purpose. In addition to the condition of the home or items, applicants may provide documentation of ability or illness if their needs impact habitability differently. Home Repair Assistance is intended to return the applicant's primary residence to a livable condition, but not to its pre-disaster condition.

HA also includes Temporary Housing Assistance which provides Lodging Expense Reimbursement, Rental Assistance, or Continued Temporary House Assistance. FEMA may also provide direct housing in the form of a Temporary Housing Unit (THU) or a Transportable Temporary Housing Unit (TTHU). TTHUs include readily fabricated dwellings such as an RV or mobile home owned or leased by FEMA. Most of these services are available for up to 18 months but will be subject to review upon the use of the initial disbursement.

## **B.     *Other Needs Assistance***

Other Needs Assistance is funded by a combination of state and federal funds. Texas elects to administer the ONA portion of individual assistance through Texas Health and Human Services Commission (HHSC). While decisions are made by HHSC, the individual will still send the appeal documents to FEMA, and FEMA will forward the appeal to HHSC.

Some types of ONA assistance are only available if the applicant applies for a Small Business Administration (SBA) Disaster Loan and does not qualify. This type of ONA assistance is referred to as SBA Dependent ONA. If an applicant is approved for an SBA loan, they may choose not to accept the loan. If an applicant decides to reject an SBA loan award, they will not necessarily be precluded from non-SBA dependent types of ONA. Still, it may be a contributing factor in FEMA's decision about approving or denying the applicant's application. Applicants may apply for non-SBA Dependent ONA whether they elect to apply for an SBA loan or not.

SBA Dependent ONA includes Personal Property Assistance (room furnishings, clothing, appliances, and essential tools for work or school, etc.), Transportation Assistance, and Group Flood Insurance Policy. These types of assistance are subject to a "pause" until an SBA application is submitted and decided. Non-SBA Dependent ONA programs are: Funeral Assistance, Medical and Dental Assistance, Child Care Assistance, Assistance for Miscellaneous Items, Critical Needs Assistance, Moving and Storage Assistance, and Clean and Removal Assistance. Please see FEMA's IAPPG Ch. 3 § VI for specific program requirements.

## **2.3     Eligibility**

*To be eligible for IHP assistance*, applicants must show:

- Disaster-Caused Damage
- Eligible Immigration Status
- Occupancy
- Ownership (for homeowners requesting home repair assistance)

The inability to prove one of these factors is the primary reason for a denial of FEMA assistance following a disaster.

To be eligible for Housing Assistance and Other Needs Assistance from FEMA, a disaster survivors' primary residence must have been damaged by the disaster. The disaster survivor would need to show they had been living in the damaged home at the time of the disaster, provide proof of ownership and no or inadequate insurance coverage. Lastly, a disaster survivor must be a U.S. Citizen, Legal Permanent Resident or Qualified Alien as defined by FEMA in the IAPPG.

FEMA updated its Occupancy and Ownership Standards in 2021 but did not update the current IAPPG to include this information. You can view the updated standards for Expanded Assistance for Disaster Survivors by reviewing the [FEMA Fact Sheet on Updates to FEMA's Individual Assistance Program and Policy Guide, Version 1.1](#).

## **2.4     Applying to FEMA**

Generally, the deadline to apply for FEMA assistance is sixty days after the disaster declaration. Counties designated for IA after the declaration may have an extension. Historically, FEMA has extended the application period often, typically at the state government's request. Pay attention to FEMA's website, local media, and press releases for deadline updates. FEMA may accept a late application for "good cause" with documentation proving the cause of the late application. "Good cause" can include but is not limited to records of hospitalization, illness, or disability of the applicant or an immediate family member; record of death for an immediate family member; or proof of personal or business travel that kept the applicant out of the area for the full application period." In theory, other good faith causes for late applications are acceptable, but in practice, if the applicant applied late for any reason other than the causes listed above, FEMA is likely to deny the applicant's request for FEMA assistance.

A copy of information FEMA will request when a disaster survivor registers for assistance can be viewed online [here](#).

### **A.     Applying**

Applicants living in a disaster area declared by the President and need disaster assistance may call 1-800-621-FEMA (3362) (hearing/speech impaired ONLY—call TTY number: 1-800-462-7585), visit a Disaster Recovery Center (DRC), or apply online [here](#) or through FEMA's app.

When applying, applicants will need their Social Security number, current and pre-disaster address, phone numbers, type of insurance coverage, total household annual income, a routing and account number from their bank if they want to have disaster assistance funds transferred directly into their bank account and a description of losses caused by the disaster.

Applicants should make copies of their application materials—and any subsequent communication they have with FEMA—in case FEMA makes a mistake or loses track of something, or if they are denied and need to prepare an appeal. If you are involved in the application phase, make one physical copy of the application for the applicant and one for yourself, and advise them to upload the application to a cloud-based drive for their records.

## **B. *FEMA Inspection Process***

FEMA will need to inspect the damaged home or personal property for an applicant to receive certain types of assistance. FEMA will call the applicant to schedule an inspection, and the applicant should try to meet the FEMA inspector at their damaged property. If they are unable to do this, they should make plans with the inspector to allow someone else to meet the inspector in their absence. This person should be either a relative or friend over the age of 18. If FEMA is unable to reach the applicant or unable to conduct the inspection, they will mark the application as withdrawn.

*Practice Tip:* To prepare for the inspection, have the applicant walk through their property room by room making a list of all the damage to their home and personal property. They can use the list as a guide during the inspection, and you can use it if there needs to be an appeal. FEMA inspectors do not go on roofs or under homes, so it is helpful to have photos or other proof that your client can show the inspector like an estimate of repair.

*Practice Tip:* If the applicant's home was flooded and they took photos of the water inside the home, they can show those to the inspector. We also suggest having pictures of the waterline in their home once the water has receded. It is best to include a ruler or measuring tape for reference in the photo so you can show FEMA the inches or feet of water that was in their home.

If the applicant speaks a language other than English, they should request an inspector who speaks their preferred language. It is imperative that they are able to communicate with the inspector during the inspection. If the inspector doesn't speak their preferred language, they should ask them to call for a telephone translation service. Lastly, they should also have someone they trust who is able to translate for them during the inspection. If the FEMA inspector does not accommodate their language needs, they should get their name and identification number and report them to FEMA.

## **C. *Decision Letter***

After the inspection, FEMA will notify the applicant of its decision regarding eligibility for assistance. If they qualify for assistance, FEMA will issue a check by mail or direct deposit. FEMA will also send the applicant a letter describing how they are to use the money.

If FEMA decides that a disaster survivor does not qualify for assistance, FEMA will send them a letter explaining why they were denied. FEMA must provide vital documents, like a determination letter, in the applicants preferred language.

*Practice Tip:* Throughout the entire application process, even if an applicant is receiving assistance from an attorney, FEMA will only issue notices of decisions or requests for additional information to the client and will not send mail or email to the attorney representing the applicants, so attorneys must ensure that their clients can and do receive all communications from FEMA.

#### **D.     *Staying in Contact with FEMA***

The applicant must keep FEMA up to date on their contact information. Some information, such as current phone number, mailing address, or insurance policy number, can be updated [online](#) by clicking Check Status and logging into their online account or creating an account. To update other file information, applicants need to call the FEMA Disaster Helpline toll-free at 1-800-621-FEMA (3362) (hearing/speech impaired ONLY—call TTY number: 1-800-462-7585), visit a Disaster Recovery Center, or write to FEMA at the address provided on any correspondence they have received. Even if they update the information by phone or in person at a Disaster Recovery Center, it is best to confirm all requests to FEMA in writing.

#### **E.     *Make an Insurance Claim***

If the applicant has insurance that may cover their disaster-caused damages, advise them to apply for FEMA anyway. FEMA cannot duplicate insurance payments, but underinsured applicants may receive assistance after their claims are settled. The applicant should make it clear to FEMA that they have insurance and that they are making a claim, or they must explain why they cannot make a claim on that insurance. The applicant must also provide FEMA all relevant documentation related to their insurance. This proof may include documentation showing relevant coverage, as well as any settlement decisions the applicant has received. Relevant coverage includes any insurance that can be used to recover from the particular peril that resulted in the damage. For example, there is no need to provide fire insurance documentation for a flood-only disaster. While the applicant is waiting for their insurance company to make a decision, FEMA will likely deny the applicant assistance. If the applicant's insurance later denies coverage, they may then appeal the FEMA decision.

*Practice Tip:* Late applications to FEMA are often unsuccessful. Applying to FEMA late because the applicant was waiting on an insurance decision is not likely to be an acceptable reason for a late application and may lead to a denial of benefits. Always recommend that the applicant submit a timely application to FEMA clearly describing the status of their insurance claim.

If the insurance company does not reach a settlement in a timely manner, FEMA may allocate funds in the meantime. Upon receipt of an insurance settlement, the applicant must send FEMA documentation of their insurance settlement and will need to pay back any duplicate funds. Please note, however, that

FEMA funds generally cannot be used to cover insurance deductibles. For more specifics about FEMA's relationship with insurance, please see Chapter 9: Insurance Issues.

#### **F.      *Avoid Duplicate Benefits***

FEMA cannot award assistance for a disaster need that an applicant has already received assistance for, regardless of the source of the assistance. If the applicant receives FEMA assistance and FEMA later determines there was a duplication of benefits, it may result in recoupment. Generally, recoupment means that the applicant will have to pay some or all of their award money back to FEMA in the future. Disaster survivors are not excluded from seeking assistance from more than one source; however, each form of assistance must cover a different need. Survivors may also receive multiple forms of assistance for the same need so long as the resources do not exceed the approved cost for that need.

### **2.5      Appealing FEMA Decisions**

Deadlines for FEMA appeals are almost always 60 days from the date on the denial letter. Occasionally, FEMA will request additional information from the applicant, and those requests typically have a deadline of 21 days.

*Practice Tip:* FEMA has a deadline for its appeals but generally accepts appeals submitted after the deadline for a good cause reason. Generally, even if the applicant's only reason for a late appeal is a lack of knowledge about the deadline, FEMA may consider the appeal. Consider appealing FEMA denials for applicants who are past the deadline if they have an otherwise strong case.

*Practice Tip:* You should follow up with FEMA within 3 days to confirm receipt of the appeal. Applicants can check the status of their application by creating an account [here](#) and clicking Check Your Status or by logging in through the FEMA mobile app.

#### **A.      *Investigate the status of the FEMA application and obtain a written consent form.***

First, you should determine what they have already submitted to FEMA, what communication they have received from FEMA, and, most importantly, what assistance they are qualified for.

If the applicant has decision letters from FEMA, ask for copies and review them. Denial letters will provide the denial reason. FEMA may list multiple denial reasons in the same letter. For example, the applicant may have received a letter denying them for home repair assistance because the "home is safe to occupy" and because they did not successfully prove ownership.

*Practice tip:* If the applicant requests legal assistance months after an application to FEMA for assistance and has not received any decision letters from FEMA, check to see if they have set up an online account and received decision letters there. Sometimes applicants who do not have reliable access to the internet set up online accounts because a family member or friend helps them and then later cannot access the online account.



*Practice Tip:* Always get written, signed consent from the applicant to release their FEMA disaster assistance records to a third party and a copy of the applicant's ID at the beginning of the representation. Both documents must be submitted with all appeals to FEMA, so having them ready will save time in the future.

FEMA has a standard written consent form available [here](#). The written consent should include the following information:

- The applicant's full name
- The applicant's date and place of birth
- The applicant's current mailing address
- The applicant's damaged address
- The last four digits of the applicant's Social Security number
- The applicant's signature (dated)
- A notarization of the statement "I hereby declare under penalty of perjury that the foregoing is true and correct."
- The applicant's FEMA Application Number and the relevant disaster number
- Specific indication of what information can be released (likely all information relevant to the applicant's case)
- Specific third-party designation identifying the individuals, entities, or organizations to whom information may be released

**B. *Request a copy of the applicant's FEMA file***

After determining the status of the applicant's application with FEMA, request the FEMA file. To request a FEMA file, submit a cover letter making the request for the FEMA file, a copy of the applicant's government-issued ID, and a written consent. Throughout the entire FEMA application process, FEMA will not communicate with an attorney or third party unless the applicant has submitted signed written consent authorizing FEMA to release the applicant's information to the advocate.

Submitting a FEMA file request early into the representation of the applicant's case is helpful for several reasons. First, FEMA files should contain all the documents both that the applicant has provided to FEMA and that FEMA has sent to the applicant. Secondly, the FEMA file may contain some notes from the caseworkers who made the decision in the applicant's case. This information may be helpful while putting together an appeal of FEMA's decision. Lastly, for the advocate to speak to FEMA on the applicant's behalf, FEMA must have a copy of the signed written consent on file. Requesting a FEMA file is an easy way to provide a copy of the written consent to FEMA early in the case.

FEMA files can sometimes arrive only a few weeks after requested but may also take several months or more. Advocates should not wait to receive the FEMA file to submit a timely appeal to FEMA.

**C. *Contact FEMA***

The FEMA helpline number is 1-800-621-3362. If you need more information about an applicant's case quickly, contact FEMA directly for more information. To avoid delays, contact FEMA directly once written



consent is on file or join in on the call with the applicant. After a disaster, survivors may experience trauma, and trying to navigate FEMA may cause additional pain or confusion. Furthermore, FEMA hotline agents, DRC staff, and inspectors are not the decision-makers, so they may give conflicting or even incorrect information or agree to things they have no authority to give (such as ordering another inspection).

## **2.6     Common Appeals**

A FEMA applicant can appeal any initial eligibility determination for assistance, including the amount of assistance awarded. Even if the applicant did receive some assistance from FEMA, they can appeal and request more assistance if they believe their disaster damages are more than the amount of assistance they received.

All appeals should follow the same outline and contain the following elements:

- A cover letter written by the attorney
- Signed written consent
- A copy of the applicant's ID
- A signed declaration from the FEMA applicant explaining the facts of the case and requesting the appeal of the FEMA decision
- Supporting documents

The contents of the cover letter, the applicant's declaration, and the supporting documents will change depending on the type of appeal, but the general format is the same. FEMA may not consider an appeal from a third party without including a copy of the applicant's ID and the signed written consent. Never send a FEMA appeal without these two documents.

In some cases, the applicant may be denied because they are missing a document. For these applicants, you may decide to send and appeal with a copy of the relevant document and no declaration from the applicant. FEMA will often accept an ownership or occupancy document without a declaration and approve the applicant for assistance. However, under FEMA's rules, an appeal must include a signed declaration to be considered an appeal of a decision.

Fax FEMA appeals to FEMA at 1-800-827-8112.

### **A.     *Immigration Status***

Eligible immigration statuses for IHP include United States Citizen, a non-citizen national, or a "qualified alien." The IAPPG contains a more in-depth explanation of the types of "qualified aliens" eligible for IHP. Applicants may be eligible for mass care/emergency assistance, crisis counseling, disaster case management, and disaster legal services even if they do not have a valid immigration status for other types of assistance.

*Practice Tip:* For mixed-status families, a US citizen minor child of undocumented parents may be the applicant to FEMA, even though minor children are typically not permitted to apply to FEMA. The undocumented parent must register as a co-applicant.

FEMA often cannot verify the identity of these minor children because they do not have government-issued IDs, which are the primary method used to verify identity. To show the identity of minor children, the easiest method is typically to submit a copy of the child's birth certificate and social security card or other documentation from the Social Security Administration showing the child's social security number.

## **B. *Ownership***

Only applicants who are requesting home repair or replacement assistance must show ownership of their home at the time of the disaster. Once the applicant represents that they are the owner of their home, FEMA will try to verify the applicant's ownership by looking at the applicant's county or other local government's records. If the records are incorrect, FEMA may deny the applicant for homeownership even if the applicant is the legal owner of the home. Additionally, if the title documents are state-specific or uncommon, FEMA caseworkers, (who are not attorneys), may need you to interpret the law in the relevant state and explain how the applicant owns the home, this will need to be done in writing.

FEMA also has an alternate ownership standard if the applicant does not have legal title to the property. If an applicant does not pay rent to live in the home and can show that either they pay the property taxes or are responsible for maintenance to the home, then they are the owner for the purposes of FEMA home repair assistance.

As a last resort, FEMA may accept a sworn statement from applicants with heirship property or those who own mobile homes or travel trailers. For a full explanation of the list of ownership documents see the IAPPG. A self-declarative statement for proof of ownership must include the following items:

1. The address of the disaster-damaged residence
2. Length of time you lived in the disaster-damaged home, as your primary residence, prior to the Presidential disaster declaration
3. Your or your co-applicant's name and signature
4. The major elements of the following statement and additional explanation:

"I have made a good faith effort, in coordination with FEMA, to obtain and provide a copy of acceptable ownership documentation. I do meet FEMA's definition of an owner-occupant because I am either [(A) the legal owner of the home. (B) pay no rent but am responsible for the payment of taxes or maintenance for the residence, or (C) hold lifetime occupancy rights]. I was unable to obtain this documentation because [provide an explanation of the circumstances that prevent standard ownership verification of the appropriate owner-occupant category]. I hereby declare under penalty of perjury that the foregoing is true and correct."

Or

A self-declarative statement for proof of ownership passed down via heirship must include all the below items:

1. The address of the disaster-damaged residence
2. Length of time you lived in the disaster-damaged home, as your primary residence, prior to the Presidential disaster declaration
3. Your or your co-applicant's name and signature
4. A copy of the decedent's death certification
5. The major elements of the following statement and additional explanation:

"I have made a good faith effort, in coordination with FEMA, to obtain and provide a copy of acceptable ownership documentation. I was unable to obtain this documentation because [provide an explanation of the circumstances that prevent standard ownership verification]."

AND, the major elements of the following statement:

"As the nearest relative of the deceased in the line of succession, my ownership includes all the rights and obligations of the deceased. The decedent's name is \_\_\_\_\_, and they died on \_\_\_\_\_. I understand I must submit the death certificate along with this declaration. I hereby declare under penalty of perjury that the foregoing is true and correct."

*Practice Tip:* If FEMA awards an applicant rental assistance, this means the applicant has met the general qualifications for FEMA assistance. If the applicant has also been denied home repair assistance, the last thing they need to prove is ownership.

For ownership appeals, as with all FEMA appeals, draft a cover letter and declaration for the applicant explaining the ownership of their property.

Submit the cover letter and declaration to FEMA with any applicant documents that clarify the title. If the applicant is attempting to show ownership under FEMA's alternate ownership standard, submit proof that the applicant is responsible for the property tax or maintenance of the property, as well as a sworn statement that they do not pay rent. A notarized statement from the legal owner confirming the applicant does not pay rent and is responsible for the property taxes or pays for maintenance is not required but is helpful.

### **C.      *Occupancy***

To be eligible for all types of IHP assistance, an applicant must have occupied the home at the time of the disaster. FEMA typically uses the applicant's government-issued ID to verify occupancy. If the applicant does not have a state-issued ID or the address on their ID does not match their home address, FEMA may deny them until they can show that they occupied the home at the time of the disaster. The most common documents to show occupancy include utility bills, bank statements, credit card statements, pay stubs,

rent receipts and rental/residency agreements. These documents must be dated within the three months prior to the disaster. The complete list of documents to prove occupancy is in the IAPPG.

A self-declarative statement for proof of occupancy must include all of the below items:

1. The address of the disaster-damaged residence
2. Length of time you lived in the disaster-damaged home, as your primary residence, prior to the Presidential disaster declaration
3. Your or your co-applicant's name and signature
4. The major elements of the following statement and additional explanation:

"I have made a good faith effort, in coordination with FEMA, to obtain and provide a copy of acceptable occupancy documentation. I was unable to obtain this documentation because [provide an explanation of the circumstances that prevent standard occupancy verification to include why the other document types were not available to the applicant or how the available documents do not meet FEMA's requirements]. I hereby declare under penalty of perjury that the foregoing is true and correct."

#### **D. *Disaster Caused Damage***

FEMA's standard for habitability is whether the home is safe, sanitary, and fit for occupancy. To appeal a "home is safe to occupy" denial, provide a declaration from the applicant explaining the damage to their home, identify any damages missed by the original inspector, and then explain how the damage was caused by the disaster. List repairs that have been made and why more financial assistance is necessary to make the home habitable. If the applicant has already received some repair assistance and spent that money on repairs, provide receipts to show how they spent the money.

The applicant must get a repair estimate. Without a repair estimate, FEMA will likely deny the applicant immediately. The estimate should be itemized and should contain the contractor's name and contact information. FEMA will contact the contractor to confirm they inspected the home, and that the disaster caused the damage. If the contractor does not respond, FEMA will likely deny the applicant's request for a second inspection.

*Practice Tip:* FEMA does not make decisions about home repair assistance amounts based on estimates or receipts from the applicant. FEMA awards money based on the inspection reports from their own inspectors. The purpose of appealing a home repair assistance decision is to ask that FEMA issue a new inspection. Hopefully, the second inspector will determine there is more damage.

Disaster survivors with disabilities who are denied FEMA benefits and whose underlying health conditions were not taken into account while determining eligibility should have a right to appeal and may be eligible for reasonable accommodation.

## **E.     *Rental Assistance/Continued Rental Assistance***

Rental assistance is available both for renters and homeowners. Homeowners may receive rental assistance if the home was damaged in the disaster and the applicant wants to relocate while the repairs to the home are made. Renters may receive rental assistance when the renter's unit was damaged or is no longer accessible.

*Practice Tip:* To determine whether an applicant needs rental assistance, FEMA asks the applicant if they are willing to relocate. Applicants often misunderstand this question and believe that FEMA is asking whether they want to relocate permanently. If the applicant does want rental assistance to temporarily relocate while repairs are being made but have told FEMA they do not want to relocate, submit a declaration from the applicant requesting rental assistance. If FEMA has already found that the home was damaged, this request will likely be approved.

In theory, continued rental assistance is available for 18 months following the disaster. However, in practice, continued rental assistance is much harder to receive than the original rental assistance disbursement. To receive continued rental assistance, an applicant must fill out and submit the continued rental assistance form. The rental assistance form must also contain the following documents: a copy of the current lease, proof that prior rental assistance from FEMA was properly spent, proof of pre-disaster housing costs including property taxes and utility bills, and proof of pre- and post-disaster income for all adults in the home.

Most importantly, the applicant will have to show that their pre-disaster residence is uninhabitable, inaccessible, or not available due to the disaster. For homeowners, if FEMA determines they have provided funds to make the applicant's home habitable, FEMA will likely decide that the applicant should return to their pre-disaster home, even if applicant believes the home is still unsafe to live in. For renters, if there are rental properties in the area charging rent comparable to pre-disaster rent prices, FEMA will likely conclude the applicant is in the same position they were in prior to the disaster. Therefore, the applicant no longer needs continued rental assistance.

Appealing continued rental assistance denials is possible but is often unsuccessful in practice. To bolster the appeal, include complete documentation that the original FEMA award was spent on rent for another residence and documentation as to why the original residence remains uninhabitable.

## **2.7     After Submitting the Appeal**

After you submit the FEMA appeal on the applicant's behalf, be sure to check on the status periodically to see if FEMA has made a decision. FEMA will not send appeal decisions to you, even with written consent on file. Be sure to remain in contact with the applicant. Contact FEMA directly to get status updates if it has taken more than 30 days for FEMA to reach a decision.

Warn the applicant that any funds received must be used for the exact purposes specified in the award letter. Be sure to tell the applicant to keep documentation proving they were eligible for the assistance

when they received it, and proof of how they spent the assistance, as FEMA may demand reimbursement for up to three years if they determine afterwards that an applicant wrongfully received FEMA assistance. Advise the applicant to make extra copies to keep or suggest creating electronic copies.

## **2.8 Other Needs Assistance Fair Hearings**

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. For detailed information on what to include with an appeal, see section 2.5 and 2.6.

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, Personal Property Assistance, Transportation Assistance, and Group Flood Insurance Policy are “SBA-dependent.” Applicants seeking this type of assistance must apply and be found ineligible for Small Business Administration disaster loans or have unmet costs remaining after SBA loan awards before those aspects of their ONA applications will be considered further.

## **2.9     Conclusion**

If your area has been impacted by a disaster, consider taking FEMA appeal cases pro bono to help your community recover. FEMA assistance is typically some of the earliest financial help to arrive in a disaster-impacted area. Getting FEMA assistance can be vital to preventing the damage from becoming worse and making recovery faster.

After a major disaster, it can be overwhelming for attorneys to know how to assist their communities. Learning a new area of law can be daunting, but your legal expertise in other practice areas can be just as helpful as a FEMA appeal. As discussed above, FEMA may rely on supplemental documentation for eligibility. Consider volunteering with your local legal services organization by taking on a probate or title clearing case, assisting a survivor in replacing lost documents, or an insurance case.

\*This chapter was written utilizing the [FEMA IAPPG](#), [FEMA’s Website](#), and the [National Disaster Attorney Guidebook chapter on FEMA assistance](#) and revised to include state specific information for Texas Attorneys.<sup>1</sup>

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<sup>1</sup> This chapter was inspired by the [National Disaster Attorney Guidebook](#) chapter on FEMA assistance and revised to include state specific information for Texas Attorneys.

## 3.0 FALLING TREES, FLYING LIMBS, & RELATED NOISES

### 3.1 Overview

This chapter addresses natural disasters—heavy rains, high winds, flooding, etc.—causing uprooted trees, broken tree limbs, and other like objects to damage persons or property. This chapter also addresses 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. These trees 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

The answers to many of the above questions depend on whether the property owners have homeowner's insurance. Further, the answers might vary due to city or county ordinance. It is possible local ordinances and regulations dictate that local municipal departments are, at times, responsible for cleaning up neighborhoods.

Generally, a court may not award damages for losses, damage, or harm suffered resulting from an "act of God." An act of God means an occurrence due directly and exclusively to natural causes without human intervention and for 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.

The act of God doctrine exempts high wind and rain damage covered by the homeowner or tenant's insurance policy. Additionally, the doctrine also exempts flood damage covered by a separate flood insurance policy. While insurance agents sell flood insurance, the Federal Emergency Management Agency oversees flood insurance policies as part of the National Flood Insurance Program. Thus, the first question is whether the homeowner or tenant has an insurance policy. The second question is whether the policy covers losses due to the specific kind of damage that occurred (e.g. high winds and rain damage). A policy may entirely exclude coverage for losses from disasters or only cover certain types of losses. 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 whether rising waters or wind-driven rain caused the damages. *National Union Fire Insurance Co. v. Cox*, [393 S.W.2d 939](#) (Tex. App.—Houston 1965, no writ).

Regardless of whether the negligent person reasonably foresaw the disaster or its force, the act of God doctrine is inapplicable to situations in which negligence was the substantial contributing cause of the damages. Instead, the doctrine only applies when 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.”). For example, after a homeowner successfully recovered damages caused by a billboard sign that collapsed on her house in 1983’s Hurricane Alicia, 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. Kubeczka*, [710 S.W.2d 79](#), 85 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1986, no writ) (internal 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 was foreseeable. *Id.* In that regard, a failure to secure objects reasonably expected to be swept up in a disaster could also create liability. Similarly, if a disaster uproots a tree and damages neighboring property or persons, the failure to take steps to remove, or at least secure, a diseased or dead tree may make the homeowner liable for damages to the neighbor.

### **3.4 Assistance Numbers**

#### **A. *Federal***

**Federal Emergency Management Agency (“FEMA”)**; 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 your home safe and livable. Structural repairs (roof, foundation, etc.) may be covered. However, the FEMA grant will not cover cosmetic repairs (shutters, carpet, etc.). FEMA encourages homeowners with damage to register so that an agent can be sent to assess the damage and determine 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. However, local government officials may set up various options to assist residents in collecting and disposing of debris after a disaster. These could include provision of drop-off sites or a curbside collection program, among others. A public entity’s removal of debris generally requires an immediate threat to life, public health, or safety. Further, state or local authorities must expressly authorize the emergency debris removal. Private landowners should call 3-1-1 or contact local government if they believe the city should authorize debris removal as part of the public interest. Further information is located on [FEMA’s public assistance fact sheet concerning the removal of debris from private property](#).

## B. *State of Texas*

**Texas Department of Insurance (“TDI”)**; 1-800-578-4677. TDI offers services to consumers and insurers, including help locating insurance carriers, monitoring insurance fraud, and answering Frequently Asked Questions. In addition, TDI issues important bulletins relating to disasters and handling post-disaster claims. TDI considers insurance-related complaints via its [website](#). For questions or assistance, contact TDI’s consumer helpline at 1-800-252-3439. See TDI’s website for other disaster resources.

### ***County, City, and Debris Removal Websites:***

#### **Bexar County**

- [City of San Antonio](#)
  - [Debris Removal](#)

#### **Dallas County**

- [City of Dallas](#)
  - [Debris Removal](#)

#### **El Paso County**

- [City of El Paso](#)
  - [Debris Removal](#)

#### **Harris County**

- [City of Houston](#)
  - [Debris Removal](#)

#### **Potter County**

- [City of Amarillo](#)
  - [Debris Removal](#)

#### **Travis County**

- [City of Austin](#)
  - [Debris Removal](#)

## 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?***

You likely cannot hold your neighbor liable if your neighbor’s tree was healthy before the disaster and the storm’s high winds caused fall damage to your property. This sort of 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 caused by the tree’s fall. This is because your neighbor was likely 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, whether the homeowner or neighbor’s policy, typically covers damage caused by fallen trees. As a practical matter, it may be easier to claim on your insurance and let your insurance company pursue any subrogation claim that may exist against your neighbor.

**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 removed the tree or taken other reasonable measures prior to the storm. The dispute over who should cover this damage boils down to which homeowner’s insurance policy provides coverage. If your neighbor is not responsible for the tree damage, your insurance should cover you. If your neighbor is responsible by their failure to remedy the tree’s poor condition, your neighbor’s insurance should cover you. Again, as a practical matter, it may be easier to make the claim on your own policy. This will allow your insurer pursue its potential subrogation claim 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. 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, in writing, of the dangerous condition of the tree. You should request your neighbor address the problem. Keep a copy of your request for your records. If your neighbor fails to remedy the tree’s condition and your property is consequently damaged (as in the examples above), you will likely be able to recover damages from the tree owner.

Contact your city or local government. Certain city departments may be responsible for cleaning up neighborhoods per building codes, sign codes, nuisance violations, and beautification projects. If the city or local government 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 on to my property?***

No. If the tree is healthy, you can trim branches that hang over your property line. Your trimming is limited to only the parts of the tree on your property. However, you cannot make your neighbor trim the tree branches on your property. In addition, if you trim branches on your property, you cannot kill your neighbor’s tree. If your neighbor’s tree dies after your trim, your neighbor can attempt to recover for their damages. If your neighbor’s tree is dead, diseased, or dangerous, contact your local government. If the local government determines that the tree is dangerous, it may issue a notice to the tree owner requiring removal.

**Q. 3-5      *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?***

No. The trees belong to your neighbors, and, thus, they may cut down the trees. Even if the trees provide shade to your yard or if the tree's branches hang into your yard, you still cannot stop your neighbors from removing their trees. However, if a tree is located on the property line, you may have an ownership interest in the tree. Your ownership interest will likely require your approval before removal of the shared tree occurs. If the tree meets the requisite size, restrictive covenants or protective tree ordinances concerning your subdivision 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 banning loud sounds at certain times. Check with your local government for noise requirements and time restrictions.

For example, Houston Noise Ordinance Section 30-5 limits noise to 65 dB(A) during daytime hours and 58 dB(A) at night (e.g. a typical chainsaw has a volume of around 100 adjusted decibels dB(A)). The ordinance defines daytime hours as those between 8 A.M. and 10 P.M. Conversely, the ordinance defines nighttime hours as those between 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). However, Houston's ordinance has two exceptions. One is for "emergency work," which the ordinance defines 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, the intent is not clear. Your neighbor could potentially argue that said work (e.g. tree cutting) qualifies as "emergency work."

Another exception to the 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). This ordinance also requires the homeowner use the equipment solely for maintenance or upkeep of the subject 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 law considers the fence the exclusive property of your neighbor.

Unless you have entered into an enforceable agreement with your neighbor, you are not obligated to fix a fence on your neighbor's property, nor can you compel your neighbor to fix their fence. You are also not obligated to fix the fence if applicable deed restrictions mandate that fences be erected and divide responsibilities among neighbors. Conversely, if the fence is on your property, it is your sole responsibility to repair it. However, your neighbor cannot compel you to replace your fence. Additionally, if the fence was originally installed on your neighbor's property but fell on to your property because of the storm, you can remove the fence from your property (in the same way you can move trees and limbs from your property).

Unless an agreement otherwise indicates and both neighbors “use” it, both neighbors own a fence straddling the boundary line between their properties. In that situation, 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 after a disaster?
- 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?
- What are the rights of a tenant versus someone staying in a hotel, and how can I tell the difference between a tenant and a hotel guest?
- What are some programs for rental assistance for landlords and tenants, how do landlords and tenants apply, and how do courts handle landlords and tenants in eviction lawsuits who participate in these programs?

### 4.3 Summary of the Law

The landlord-tenant relationship in residential leases is governed almost exclusively by sections 91 and 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 section 92 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 of section 92 of the Property Code can only be waived 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 management, or utility shutoffs, [Tex. Prop. Code § 92.006\(a\)](#), tenant rights to a jury trial in an action brought under the relevant provision of the Property Code, [Tex. Prop. Code § 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, sexual assault, or stalking, [Tex. Prop. Code §§ 92.016\(g\), 92.0161\(h\)](#), 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 are covered by section 24 of the Texas Property Code. 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. 4-13](#) 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, although that may not stop a landlord from pursuing them for fees and amounts allowed under the lease, including rent, damages, reletting fees, etc. 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 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](#).

#### **A. *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 with the court a statement that the tenant is financially unable to furnish the appeal bond or pay 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, then 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.

#### **B. *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 render 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, etc.
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 being a tenant, the likelier it is that a judge would find that the occupant is entitled to the tenant protections, including the requirement that a landlord not lock the tenant out, but instead go through the formal eviction process. (Eviction process described in [Q. 4-13](#) below.)

### **C. *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 who is 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.

### **D. *Repair Orders in Justice Courts***

[Tex. Prop. Code § 92.0563](#) and Tex. R. Civ. P. 509.1-509.9 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 \$20,000, excluding interest and court costs but including attorney's fees. (The jurisdictional amount for



repair cases changed from \$10,000 to \$20,000 effective September 1, 2023. Any cause of action accruing before September 1, 2023, is limited to \$10,000, the previous statutory limit.)[Tex. R. Civ. P. 509.6\(a\)](#); [Tex. Prop. Code § 92.0563\(e\)](#).

#### **E. *Tenant's Right of Restoration after Unlawful Utility Disconnection***

With the exception of electricity in certain circumstances (see below), residential landlords may not 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.

In certain circumstances, a landlord may interrupt electric utilities due to the nonpayment of electric bills by interrupting electrical service for submetered (meters in individual tenant spaces) or allocated nonsubmetered spaces. The law includes a complex process of notice, protections, and exceptions. See [Tex. Prop. Code § 92.008](#).

#### **F. *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 that person. [Tex. R. Civ. Proc. 510.3\(c\)](#).

#### **G. *CARES Act Protections for Tenants***

The Coronavirus Aid, Relief, and Economic Security (CARES) Act provided renters some protections that have now expired. However, if the tenant lives at a "covered property" and an eviction case is based on nonpayment, the landlord is still required to give a 30-day notice to vacate. (There is also a textual argument that the 30-day notice requirement applies to cases that are not for nonpayment, although advocates have had mixed success with that.) Full text available at [H.R.748 - CARES Act](#). This renter protection is at § 4024(c) of the law.

##### **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, and
- USDA Rural Housing Choice Voucher program

#### **How does a tenant know whether they live in a covered property?**

Check the lease documents, which should state if the property participates in one of the housing programs in the list above. Also, the landlord may know if their mortgages are backed by a federal agency (HUD, VA, USDA), Fannie Mae, or Freddie Mac. You can also search the following sources:

- [The National Low Income Housing Coalition's database of covered multifamily properties](#) (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](#)
  - [Freddie Mac](#)
- [The National Housing Preservation Database](#) of multifamily properties with certain federal subsidies (Note: Not exhaustive)

#### **H. *Payment of Interpreter Costs***

Effective September 1, 2023, Section 57.002(g) of the Texas Government Code was amended as follows: "A party to a proceeding in a court who files a statement of inability to afford payment of court costs under Rule 145, Texas Rules of Civil Procedure, is not required to provide an interpreter at the party's expense or pay the costs associated with the services of an interpreter appointed under this section that are incurred during the course of the action, unless the statement has been contested and the court has ordered the party to pay costs pursuant to Rule 145. Nothing in this subsection is intended to apply to interpreter services or other auxiliary aids for individuals who are deaf, hard of hearing, or have communication disabilities, which shall be provided to those individuals free of charge pursuant to federal and state laws."

#### **I. *Remote Proceedings***

The Texas Rules of Civil Procedure have been amended to clarify when judges can conduct remote proceedings. In justice court, a judge may appear by videoconference or other means and, in deciding

whether to allow or require electronic participation, should consider factors including case type, technology restrictions, travel restrictions, language access, accommodation of a person with disabilities, agreement and objection of the parties, etc. [Tex. R. Civ. P. 500.10](#). The rules for county or district court are more restrictive, where a court may not require a remote proceeding where oral testimony is heard, absent good cause or agreement of the parties. [Tex. R. Civ. P. 21d](#). A party may object, with good cause, to any method of appearance, and the court must rule on the objection after considering factors including case type, complexity of the legal and factual issues, technology restrictions, travel restrictions, language access and accommodations for a person with a disability, etc. [Tex. R. Civ. P. 21d](#).

#### **4.4 Rent Relief**

There are local rent assistance programs that are administered by agencies, cities, or municipalities. Tenants can call 211 or 1-877-541-7905 or go to [www.211texas.org](http://www.211texas.org) for information about rental assistance. Partial lists of programs are available here:

- Local rental assistance: [texaslawhelp.org/article/local-rent-assistance](http://texaslawhelp.org/article/local-rent-assistance)
- [app.smartsheet.com/b/publish?EQBCT=5a1b012646c94b1cbe92e741acfd9b59](http://app.smartsheet.com/b/publish?EQBCT=5a1b012646c94b1cbe92e741acfd9b59) (may not be updated)

#### **4.5 Assistance Numbers**

- |   |                                  |
|---|----------------------------------|
| • American Red Cross Disaster Services Relief Hotline | 1-800-RED-CROSS (1-800-733-2767) |
| • Better Business Bureau                              | 1-713-868-9500                   |
| • 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                        | 1-855-548-8457                   |
| ○ Lone Star Legal Aid                                 | 1-866-659-0666                   |
| ○ Texas RioGrande Legal Aid                           | 1-956-996-TRLA (8752)            |

## 4.6 FAQs—General

### ***Q. 4-1      What are my rights if I want to terminate my lease at my dwelling, following a 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 following a disaster 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 because 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. 4-13](#) 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 pro rata refund of rent from date the tenant moves out and refund of 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 the pro rata portion of rent, 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 92.055](#) (c) or (d).

In short, if the tenant has not given a notice of termination pursuant to [Section 92.054](#) ([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 [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 only get the reduction by a judgment from a county or district court, or by agreement with the landlord. [Tex. Prop. Code § 92.054\(c\)](#) provides that 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*. However, a landlord may include in a written lease a provision prohibiting a tenant from seeking a reduction of rent in these circumstances, so many leases waive a tenant's right to get this rent reduction. Of course, if 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 my landlord required to make the other unit available? Can 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 during a disaster?***

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 during a disaster?***

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 during a disaster?***

It is advisable to try every means of communication available, including, but not limited to: telephone calls to every available phone number, email 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 landlord may file an eviction case in justice court if the tenant does not vacate. (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 re-entry”) allowing you back in your residence. [Tex. Prop. Code § 92.009](#).

**Q.4-12      *If a city or county revokes a landlord's certificate of occupancy because of the landlord's failure to maintain the residence, for example after a disaster, what are a tenant's rights?***

If a city or county revokes a landlord's certificate of occupancy for the landlord's failure to maintain the residence, the landlord is liable to a tenant not in default under the lease (e.g., doesn't owe rent, etc.) for the following:

1. the full amount of the tenant's security deposit;
2. the pro rata portion of any rental payment the tenant has paid in advance;
3. the tenant's actual damages, including any moving costs, utility connection fees, storage fees, and lost wages; and
4. court costs and attorney's fees arising from any related cause of action by the tenant against the landlord.

[Tex. Prop. Code § 92.023](#).

**Q. 4-13      *What should I do if I am served with an eviction lawsuit?***

A landlord cannot use self-help to remove a tenant from an 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. A tenant should not avoid receiving this eviction citation, because it will contain a trial date for the case. 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; landlord did not properly terminate the lease; 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. 4-14      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. 4-15      May I recover damages against my landlord for injuries or property damage I suffered as a result of the disaster?***

When the injury or property damage results from a natural disaster and not from the landlord's negligence, the landlord is not liable for such injury or property damage. 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. 4-16      I have suffered personal injuries or loss or damage to my personal belongings from the disaster. May I recover damages against my landlord or the previous homeowner if they knew about the possibility of flooding and failed to inform me?***

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



If the landlord or seller said nothing about the possibility of flooding, then you will probably not be able to recover any damages. Generally, the mere failure to disclose a fact known by the seller or landlord is not fraud. 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.

For leases entered into or renewed on or after January 1, 2022, if a residence is located in a 100-year floodplain and does not have an elevation above the floodplain level, the landlord must give the tenant a written notice about this at or before the signing of the lease. Also, a landlord who knows of flooding damages to a residence during a five-year period before the lease must give a tenant a written notice informing them that they are aware of the flooding. These notices have specific statutory language and must be included in a separate written document given to the tenant at or before the signing of the lease. If the landlord violates this law and the tenant suffers a substantial loss or damage to their personal property as a result of flooding, the tenant may terminate the lease with a 30-day notice. [Tex. Prop. Code § 92.0135](#) (effective January 1, 2022).

***Q. 4-17 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. 4-18 All of my personal belongings were destroyed at the place I rent. What help can I get from my insurance company?***

If you had renters insurance or homeowners 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. Note that some landlords require tenants to get what may be called “renters insurance,” but which may only include coverage for the landlord and not the renter. If you have questions about coverage for any renters insurance you have, you should call the insurance company.

Emergency assistance may be available from local Volunteer Agencies (i.e., Red Cross, Salvation Army, United Way).

***Q. 4-19 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.” “Other than Housing Needs” assistance is available for necessary expenses and serious needs caused by the disaster. You may also wish to contact the Red Cross, which may be able to help you.

**Q. 4-20     *If my personal belongings are lost or damaged as a result of a 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. 4-21     *Is flood damage to my home covered under my insurance policy?***

Your homeowners 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.

**Q. 4-22     *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. 4-23     *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. 4-24     *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. 4-25      *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. 4-26      *What about my commercial lease?***

In commercial leases, the Texas common law has not been pre-empted 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. 4-27      *Must I continue paying rent for my commercial lease space (office, retail, mini-storage, etc.) even though it has been rendered totally or partially unusable by the disaster?***

The particular provisions of a commercial lease will control whether rent must be paid following a complete or partial destruction of the space. 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. Civ. App.—Dallas 1922, writ ref'd).

## 5.0 REAL & 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.

#### **A. *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.

#### **B. *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 (or, if the property is located in an area declared to be a disaster area by the governor and the structure is rendered uninhabitable or unusable by the disaster, the fifth 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 (i) five years, if the property is located in an area declared to be a disaster area by the governor and the structure is rendered uninhabitable or unusable by the disaster, and (ii) two years in all other cases. 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.

**C. *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 support an increase with clear and convincing 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.

**D. *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 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 first installment must be paid before 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 and interest. See [Tex. Tax Code § 31.032](#).

**E. *Waiver of Certain Tax Penalties***

The chief appraiser or collector may waive a late penalty for an otherwise compliant taxpayer if the taxpayer seeking the waiver files a written application for the waiver with the chief appraiser or collector, no later than the 30<sup>th</sup> day after the date the declaration or statement, as applicable, was required to be filed. The chief appraiser or collector may also waive a late penalty if the taxpayer's failure to file or failure to timely file the declaration or statement 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. See [Tex. Tax Code § 23.129](#).

**F. *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. To contact the Division, visit their [website](#).

#### **G.      *Manufactured Homes—Statement of Ownership***

Title to a manufactured home is evidenced by a “Statement of Ownership.” Statements of Ownership are issued by the Manufactured Housing 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 \(PDF\)](#).

#### **H.      *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. Used homes sold at a reduced price only have a 60-day warranty of habitability.

### **5.2      Assistance Numbers and Helpful Regulatory Agency Information**

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

**Houston Field Office**

1301 Fannin St., Suite 2200

Houston, TX 77002

1-713-718-3199 or 1-800-225-5342

OR

TTY: 1-800-877-8339

**Single Family:** 1-877-622-8525

**Public Housing:** 1-713-718-3214

**Multifamily:** 1-800-685-8470

**Website:** [www.hud.gov](http://www.hud.gov)

**Email:** [answers@hud.gov](mailto:answers@hud.gov)

- **Fort Worth Regional Office**

307 W. 7th St., Suite 1000

Fort Worth, TX 76102

**Phone:** 1-817-978-5600

**Email:** [TX\\_Webmanager@hud.gov](mailto:TX_Webmanager@hud.gov)

**Fax:** 1-817-978-5569

**TTY:** 1-800-877-8339

- **San Antonio Field Office**

Hipolito Garcia Federal Building  
615 East Houston Street, Suite 347  
San Antonio, TX 78205-2001

**Phone:** 1-210-475-6800

**Email:** [TX\\_Webmanager@hud.gov](mailto:TX_Webmanager@hud.gov)

**Fax:** 1-210-475-7815

**TTY:** 1-800-877-8339

- **Federal Emergency Management Agency (FEMA)**

1-800-621-3362

**Website:** [www.fema.gov](http://www.fema.gov)

**Email:** [FEMA-New-Media@dhs.gov](mailto:FEMA-New-Media@dhs.gov)

- **Do I Qualify for Housing Assistance?**

[www.fema.gov/do-i-qualify-housing-assistance](http://www.fema.gov/do-i-qualify-housing-assistance)

- **Disaster Relief Options for FHA Homeowners**

[portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/sfh/nsc/qaho0121](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/nsc/qaho0121)

- **Property Taxes in Disaster Areas and During Droughts**

[comptroller.texas.gov/taxes/property-tax/disasters](http://comptroller.texas.gov/taxes/property-tax/disasters)

- **Texas Department of Housing and Community Affairs—Manufactured Housing Division**

[www.tdhca.state.tx.us/mh](http://www.tdhca.state.tx.us/mh)

For contact information, visit [here](#).

### **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 cannot 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 accrue). 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 their 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?](#)

**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, VA, 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 [Disaster Relief Options for FHA Homeowners](#) and [Single Family Housing Field Guidance on Disaster Declarations](#).

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 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. A Chapter 13 repayment plan can be anywhere from 2 - 5 years. See [11 U.S.C. § 1322](#); *In re Adams*, [176 B.R. 9](#), 10 (Bankr. 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 renters insurance. A tenant who has renters 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 homeowners 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, schoolbooks, supplies). Applications for assistance can be sent by either calling 1-800-621-3362 (hearing/speech impaired ONLY call—TTY number: 1-800-462-7585) or by visiting [FEMA Individual 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, it 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, and (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 comptroller 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.5-12 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 (FEMA), or other appropriate source. The exemption percentage starts at 15% and can go up to 100% if the property is totally destroyed.

***Q. 5-13 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 (Form 50-312: Temporary Exemption Property Damaged by Disaster). **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. 5-14 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. 5-15      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. 5-16      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.

For General Information:

[www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/help-for-homeowners/learn-about-forbearance](http://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/help-for-homeowners/learn-about-forbearance)

[texaslawhelp.org/article/programs-to-help-you-avoid-foreclosure#toc-1file](http://texaslawhelp.org/article/programs-to-help-you-avoid-foreclosure#toc-1file)

For Fannie Mae Loans:

[www.fanniemae.com/here-help-homeowners](http://www.fanniemae.com/here-help-homeowners)

For Freddie Mac Loans:

[www.freddiemac.com/about/covid-19.html](http://www.freddiemac.com/about/covid-19.html)

## **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 a disaster?
- Can my employer fire me because a natural disaster has occurred?
- If I cannot work because of a 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 [Eligibility and Benefit Amounts](#) from the Texas Workforce Commission (TWC).
- b. The individual must be unemployed or partially unemployed.
- c. The individual cannot have been fired for misconduct or have voluntarily quit without good cause. See [Eligibility and Benefit Amounts](#) from the TWC.
- d. The individual must be able and available to work.
- e. The individual must be actively seeking work. See [Ongoing Eligibility Requirements for Receiving Unemployment Benefits](#) from the TWC.

For more information, 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 been rejected or have otherwise exhausted regular

unemployment benefits through the TWC. The first step in accessing federal DUA is to apply to the TWC first.

DUA availability 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 date as determined by DUA and the Federal Emergency Management Agency (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 income from the job lost represented more than 50% of the applicant's total income.
- b. The applicant lives, works, or travels to work 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 the breadwinner or major supporter 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.

See the FFRCA section below for further detail.

### 3. Work Search Requirements and Waiting Week

Under normal circumstances, TWC will not pay for the first week of a claim (the "[Waiting Week](#)") until the claimant receives two times their weekly benefit and has either exhausted their benefits or returned to full-time work.

TWC [has work search requirements](#) for all claimants. See [Required Number of Work Search Activities by County](#).

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

### ***B. Continuation of Group Health Coverage under COBRA***

After a disaster, employees 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. An employer may be required to extend COBRA continuation coverage to such an individual and their 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 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.

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. [26 C.F.R. § 54.4980B-2, Q&A-1](#). Each Qualified Beneficiary may make a separate election with respect to coverage. [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, either the spouse or the dependent child could separately elect COBRA under a single plan while the remaining family members waive coverage.

Generally, a Qualified Beneficiary may continue their 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 coverage to a similarly situated active employee (not just the contribution that the employee paid while actively employed). [26 U.S.C. § 4980B\(f\)\(2\)\(C\)](#). Also, an employer is not required to offer COBRA coverage if group health plan to its active employees. [26 U.S.C. § 4980B\(f\)\(2\)\(B\)\(iii\)](#). 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 continued coverage.

An eligible person who 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. Those who have been dislocated by the disaster might not promptly receive this notice. Qualified Beneficiaries only have sixty days to elect COBRA coverage from the later of the date of the COBRA notice or the date of loss of coverage. [26 U.S.C. § 4980B\(f\)\(5\)](#). See the DOL 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. It also 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 remaining 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 they cannot access their card, they can contact the [Marketplace Call Center](#) at 1-800-318-2596 (TTY number: 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. 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 [Employment & Wages Under Federal Law During Natural Disasters & Recovery from the DOL](#).

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 [FAQ Regarding Furloughs and Other Reductions in Pay and Hours Worked Issues](#) from the DOL.

For more information about wages refer to the [DOL Fact Sheets](#), which include explanations of the 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. Employees who are not FLSA-exempt must be paid at least twice a month on the paydays 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 (3) 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. See [How to Submit a 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 leave employment voluntarily must be paid in full no later than the next regularly scheduled payday. [Tex. Lab. Code § 61.014](#).

### 3. Wage Theft

Under [Texas Penal Code § 31.04](#), the offense of theft of service occurs 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.” Evidence of partial payment of wages alone is not a defense to an employer’s intent to avoid payment for a service.

### 4. WARN Act

Under certain circumstances, employees who lose employment because 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. Read more about [WARN Act Compliance Assistance](#) from the Department of Labor.

### 5. Independent Contractor

Under federal law, an independent contractor may be deemed an employee entitled to the protections of the FLSA, the TMWA, the Texas Payday Law, etc. Both the Internal Revenue Service (IRS) and the DOL consider many factors when determining whether a worker is an independent contractor or an employee. *Control* over the worker is among the most important. A worker is more likely to be considered 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. See the IRS publication [Independent Contractor \(Self-Employed\) or Employee?](#) and the DOL’s Fact Sheet: [Employment Relationship Under the FLSA](#).

## ***E. Prohibited Employment Discrimination & Wrongful Termination***

Generally, Texas is an employment-at-will state. This means that if an employer disliked the employee’s job performance, if the employee failed to follow workplace policies, or if the employee’s services are no longer needed, an employer can fire the employee for any lawful reason. There are many exceptions to “at will” employment:

- An employee cannot be fired because of their race, sex (including LGBT status or pregnancy 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 their rights under 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 or paternity leave, time off to adopt a child, or 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, 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 ("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 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. See TWC information on [wrongful discharge and exceptions](#).

*Prohibited employer discrimination against evacuees:* Texas law prohibits discrimination for participation in an emergency evacuation. An employer may not discharge or discriminate against an employee who leaves their 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 firefighters, 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 due to a national emergency. See [Your Rights Under USERRA](#).

#### ***F. Unpaid Leave Entitlement***

In addition to paid vacation or sick leave, 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. § 825 et seq.](#) Leave is available in part to cover an employee's own serious health condition that renders the employee unable to perform the employee's job, and to care for the employee's spouse, son or daughter, or parent who has a serious health condition. 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:

1. they have worked for their employer for at least twelve months (need not be consecutive),
2. they worked at least 1,250 hours (about 1 month 3 weeks) over the year preceding their need for leave, and
3. 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. The employer must maintain the employee's health coverage under any group health plan for the duration of FMLA leave.

Substitution of paid leave is allowed under the FMLA. [29 U.S.C. § 2612\(d\)\(2\)](#). Employers may require employees to use paid vacation, personal, family, or medical sick leave concurrently with FMLA, subject to certain limitations. FMLA regulations 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 half day FMLA leave. Similarly, if vacation time cannot be taken during a particular month, substitution could be denied during that time period. Read more about FMLA leave from the DOL [here](#).

#### **6.4 Regulatory Agency Directives**

The DOL, in coordination with FEMA, provides funds to state unemployment insurance agencies for payment of DUA benefits. Accordingly, the TWC administers DUA benefits to those 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.

#### **6.5 FAQs**

##### ***Q. 6-1 What is unemployment compensation?***

Unemployment compensation benefits provided to Texas workers by the Texas Workforce Commission. The TWC 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." An employee who has been fired from their job "for cause" (misconduct) is probably 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, an applicant:

- a. must have earned sufficient wages to qualify for benefits in the "base period,"
- b. must be unemployed or partially unemployed,
- c. cannot have been fired for misconduct or voluntarily quit without good cause,
- d. must be able and available to work, and
- e. must be actively seeking work. See TWC eligibility guidelines [here](#).

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

DUA provides financial assistance to those who lost employment as a direct result of a major disaster as declared by the president of the United States *and* are not eligible for regular unemployment insurance benefits under the TWC's unemployment compensation program. An example would be an individual who is self-employed or is 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?***

An unemployed U.S. national or qualified alien might qualify for DUA if they:

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

Those who are unemployed and not eligible for regular unemployment compensation should apply for DUA benefits as soon as possible. Applicants must comply with DUA application deadlines and waiting periods for receipt of benefits. Refer to the TWC's page on [Disaster Unemployment Assistance](#).

***Disaster Unemployment Assistance for Noncitizens***

In addition to other DUA requirements, noncitizens must meet the following to be eligible for DUA. See [20 C.F.R. §§ 625.4, 625.8\(f\)](#):

- a. A noncitizen must be authorized to work for the weeks for which they are claiming DUA *and*
- b. A noncitizen must have had one of the following statuses during the time they were earning the wages that are used to calculate the weekly benefit amount:
  - i. lawfully admitted for permanent residence in the United States at the time such services were performed,
  - ii. lawfully present for purposes of performing such services, or
  - iii. permanently residing in the United States under color of law at the time such services were performed.

Noncitizens must have had one of the three statuses listed above during at least part of their base period. A noncitizen who qualifies for benefits at the time of the application but did not have a qualifying status might be ineligible. With some exceptions, the weekly benefit amount is normally calculated using the wage credits earned during the base period (usually the first four calendar quarters of the five quarters immediately preceding the date the DUA claim is made. See [Tex. Lab. Code §§ 201.011, 207.004](#). See TWC's [Eligibility & Benefit Amounts](#).

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

Disaster unemployment benefits are unrelated to FEMA benefits and require a separate application. Before an applicant can qualify for DUA, they must apply to TWC to determine if they are eligible for regular benefits. As a practical matter, the TWC may accept your applications for both regular benefits and DUA at the same time.

- Apply to the TWC for benefits online [here](#). TWC also offers an [online tutorial](#) for help and answers. To apply by phone, call the TWC at 1-800-939-6631. For Relay Texas, dial 7-1-1 (TTY number: 1-800-735-2989).

The applicant should be prepared to provide the business name and address of their employer, the first and last dates of employment, the number of hours worked, rate of pay, and their social security number (or alien registration number). If eligible for DUA, TWC will inform the applicant of the benefit amount, how to request payments, and other information.

The applicant must complete a work search registration at [WorkinTexas.com](#) or with their local Workforce Solutions Office within three (3) days of applying for DUA. See a directory of local workforce solutions offices [here](#). If the applicant was self-employed at the time of the disaster and is taking steps to reopen their business, they do not need to apply. If they do not plan to reopen their business, they must complete a work search registration and seek employment as a condition of receiving benefits.

For DUA, the applicant 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. If this documentation is not submitted within the twenty-one-day period, eligibility for DUA might be denied. See the [TWC's information on DUA](#).

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

An applicant can obtain proof of prior income/earnings from the Internal Revenue Service (IRS). Complete and 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 1-866-562-5227. 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 receive a Form 1099-G at the end of January the following year showing the amount of benefits paid to you in the previous year, as well as any federal income tax withheld when the benefits were paid. The 1099-G will not show credit for any repayments made for overpaid benefits. UI and DUA recipients should keep records of repaid benefits, such as reimbursement receipts and canceled check notices, to make adjustments to taxable income when filing tax returns.

**Q. 6-8      *What DUA benefits are available?***

If approved, 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, the maximum weekly benefit amount will be determined by the TWC. See the [TWC's information on DUA](#).

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

Reemployment services are available through Texas Workforce Centers. See the [Work in Texas](#) site. Check with the nearest [Workforce Solutions](#) office.

**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:

- a. most voluntary or involuntary terminations,
- b. a reduction in hours triggering a coverage loss, or
- c. 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 an employer ends the group health plan for active employees, it is not required to extend coverage through COBRA. See [An Employee's Guide to Health Benefits Under COBRA](#) from the DOL.

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

Those who are having trouble making health insurance premium payments because of financial difficulties due to disaster should contact their health insurance provider directly and let them know the reason. Persons displaced due to disaster may have no alternative but to use an out-of-network provider. If so, review the policies regarding out-of-network reimbursement. Call the number listed on the back of the insurance card or visit the insurer's website. For lost cards, contact the Marketplace Call Center ([HealthCare.gov](#)) at 1-800-318-2596 (TTY number: 1-855-889-4325).

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

This coverage should not be affected. See the Texas Health and Human Services (HHS) page on [Help Coordinating Your Services](#). For Medicaid, call the HHS Medicaid Client Hotline at 1-800-252-8263. For the Children's Health Insurance Program (CHIP), call 1-877-543-7669 or 1-800-647-6558.

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

Some employers may place employees on unpaid administrative leave status (temporary leave) while the office or other worksite regroups. If the employer's benefits plan permits continuation of coverage, employees might be able to maintain coverage without a gap. Workers should ask their employer about temporary reduced work hours and alternatives to full employment while the employer is in a disaster recovery period.

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

Generally, yes. An employer can fire an employee for any lawful reason, such as job performance, failure to follow workplace policies, or the employee's services are no longer needed. An employee that is fired for reasons based on discrimination or other unlawful reasons are exceptions to Texas's "at-will" employment doctrine. See Section G above on Prohibited Employment Discrimination & Wrongful Termination.

The Worker Adjustment and Retraining Notification (WARN) Act 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 and 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 the employer does not provide proper notice, the employee may be due back pay and benefits for up to the sixty-day notice period. Read more about [WARN Act Compliance Assistance](#) from the Department of Labor.

**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 Section G above on Prohibited Employment Discrimination & Wrongful Termination.

An employer may not discharge or in any other manner discriminate against an employee who leaves work to participate in a general public evacuation ordered under an emergency evacuation order. [Tex. Lab. Code § 22.002](#). An emergency evacuation 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 [Texas Government Code § 418.108](#).

If discharged in violation of [Texas Labor Code § 22.02](#), the discharged employee is entitled to reinstatement in the same or an equivalent position and pay. [Tex. Lab. Code § 22.003](#). 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. [Tex. Lab. Code § 22.004](#).

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

Many employers have sick leave or vacation policies that entitle employees 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 for certain family and medical reasons. The FMLA applies to employers with at least fifty (50) employees. To be eligible, the employee must have worked for the employer for at least twelve months (need not be consecutive) and at least 1,250 hours over the year preceding the need for leave.

The FMLA does not require an employer to give time off to attend to personal matters arising out of a natural disaster, such as cleaning a flood-damaged basement, salvaging belongings, or searching for missing relatives.

Employees that suffered a serious health condition as a result of a natural disaster may qualify for FMLA unpaid leave. A "serious health condition" is a physical or mental illness or injury that renders the employee unable to perform their job, or they must care for a spouse, child, or parent with a serious health condition who is affected by the natural disaster. Some examples:

- a. As a result of the natural disaster, a chronic condition (such as stress, anxiety, or soaring blood pressure) flares up, rendering an employee unable to perform their job. Where a medical certification supports the need for leave as a result of the natural disaster, FMLA leave is in play.
- b. An employee is required to care for a family member with a serious health condition for a reason connected with the natural disaster. For example, the employee may need to assist a family member when their medical equipment is not operating because of a power outage.

While on FMLA leave, the employee may continue their existing group health coverage and are entitled to reinstatement at the end of the leave. See Section H above on Unpaid Leave Entitlement.

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

Most employees' pay is directly deposited into their bank account. If not, the employee should make sure their employer has their current address. An employee may give written consent for someone to receive or pick up wages on their behalf.

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

An employee should not assume that a disaster entitles them to leave work or not report to work unless there is an official evacuation order. If there is no emergency order, the absence may be considered personal leave, unauthorized leave, or possibly grounds for termination. An employer cannot fire or discriminate against an employee for leaving work as part of an emergency evacuation order, which is an official statement by the government recommending evacuation because of a disaster or potential disaster. [Tex. Lab. Code § 22.02](#).

For employees entitled to overtime (non-exempt employee), their employer is required to pay only for the hours actually worked. Non-exempt employees are not entitled to pay if their employer is unable to provide work due to a natural disaster.

Exempt employees must be paid full salary if the worksite is closed or unable to reopen due to disaster or weather for less than a full work week. If the employee performs any work during the work week, they are entitled to be paid full salary, but may be required to exhaust accrued personal leave. If the worksite is open and the employee chooses to stay home because of weather, road closures, transportation issues, or other emergencies, the DOL considers these personal absences. The employer may deduct any full days from the employee's salary for time not spent working or choosing not to come into the workplace.

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

If the employee does not have direct deposit, they should contact their employer immediately to let them know where to send their final paycheck. If the employee quit, they are entitled to be paid wages in full by the next regular payday. If fired, the employee is entitled to their full paycheck within six days of the date of firing. [Tex. Lab. Code § 61.014](#) "Final pay" includes regular wages, fringe benefits payable under a written policy, and any other component of pay. Read the employment manual or contract. For wage complaints, call the Texas Workforce Commission at 1-800-832-9243. Review the TWC page on [Final Pay](#).

**Q. 6-20      *Can I still get coronavirus unemployment benefits?***

Texas ended its participation in pandemic unemployment insurance programs effective June 26, 2021. If you live outside of Texas, please consult resources applicable to your state to find out what programs might be available.



## **7.0 SOCIAL SECURITY, BANKING, & FINANCIAL ISSUES**

### **SOCIAL SECURITY**

#### **7.1 Social Security Office Closures**

The Social Security Administration (“SSA”) closed all local, hearing, and regional offices to in-person visitors on March 17, 2020, due to the COVID-19 public health emergency. However, SSA is currently in the process of reopening the majority of offices to in-person business. All offices allowing in-person visits allow visits without appointments, however appointments are still suggested. Additionally, most in-person business such as interviews, appointments, and hearings can still be conducted remotely over the telephone or via MS Teams.

#### **7.2 FAQs—Social Security**

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

Yes. SSA continues 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 the [SSA’s website](#). 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 that they are received on time. To contact SSA over the phone, please call 1-800-772-1213. Finally, most SSA offices have reopened to in-person business. Please contact your local office for information about scheduling an in-person visit for business that cannot be accomplished online or over the telephone.

***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.

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

If you have an in-person appointment or hearing scheduled with SSA, you should immediately contact SSA to find out about their specific COVID-19 safety protocols.

***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. You should 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 without a visit to your local SSA office.

## **BANKING & FINANCIAL ISSUES**

### **7.3 Common Tax Relief after Disasters**

The IRS website has a dedicated disaster section where it posts updated information regarding current disasters and tax relief available to disaster survivors. The web 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 disaster 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 extensions to filing and payment deadlines, along with 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 1-866-562-5227 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. Most affected taxpayers will not have to take any action. IRS computer systems automatically identify taxpayers located in covered disaster areas and apply filing and payment relief to those accounts. Taxpayers who reside or have a business outside the covered area, or those who moved to the covered area after their last contact with the IRS must call the Disaster Assistance Hotline to request relief.

During the disaster relief period, the IRS suspends mailing of notices to taxpayers; 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 period are automatically suspended. The taxpayer must resume payments the month after the disaster relief period ends. However, taxpayers enrolled in automatic direct debit installment agreements must take affirmative action to prevent automatic drafts during the disaster relief period by calling the Disaster Assistance Hotline. During the COVID-19 pandemic, the IRS advised taxpayers to contact their banking institution to stop payments during the defined disaster period due to large call volumes and its limited resources.

Disaster survivors may need quick access to prior year tax data to file an amended tax return 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 must 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. A Tax Return Transcript shows entries as

they appeared on the originally filed tax return, which will assist in preparing an amended return. The Tax Return Transcript is not a copy of the tax return. Other transcripts that may be helpful in preparing a missing or an amended tax return are the Account Transcript and the Wage and Income Transcript. Account Transcripts show whether a tax return was filed and any additional activity for a specific tax year. Wage and Income Transcripts provide income information reported to the IRS by third parties for a specific tax year. Taxpayers or their authorized representative may call 1-800-908-9946 or the Disaster Assistance Hotline to request transcripts free of charge. Taxpayers may be able to access transcripts free of charge through the IRS website by choosing the “Get Your Tax Record” button located on the homepage and creating an account.

Taxpayers claiming disaster losses on an amended tax return to access cash refunds must write the disaster designation in red across the top of Form 1040X to ensure the IRS applies expedited processing procedures. In the past, the average expedited processing time was sixty days. However, at the beginning of the COVID-19 pandemic, the IRS stopped opening mail for several months, which resulted in a backlog of correspondence. To date, the IRS continues to have extraordinarily lengthy delays for correspondence processing and extremely limited resources for telephone assistance. Taxpayers experiencing economic hardship should apply for a manual refund through the Taxpayer Advocate Service (TAS), an independent branch of the IRS that assists taxpayers experiencing financial hardships. An application for TAS assistance can be made by faxing a completed Form 911 to your local TAS 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 advocate assigned to assist with the manual refund request. Visit the IRS [Taxpayer Advocate](#) website for more information.

Qualified disaster relief payments under [26 U.S.C. § 139](#) are not taxable income to disaster survivors to the extent the reimbursed expense was not compensated for 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 found in [§ 139\(b\)\(4\)](#).

Many disaster survivors lose 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.

## 8.0 CONSUMER PROTECTION ISSUES

### 8.1 Overview

Disasters are breeding grounds for deceptive trade and fraudulent consumer practices. In the aftermath of an event, the uncertainty and immediacy put people at substantial risk of fraud. Disaster survivors who are most vulnerable, such as our seniors, individuals with disabilities, or those with limited English proficiency, are particularly at risk of scams and bad actors. In addition, the financial stress of a disaster can exacerbate financial instability and result in collections, making them more in need of consumer legal assistance. Consumer education and 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.**

Consumers also have an option to file administrative complaints with agencies such as: the Consumer Finance Protection Bureau, the Federal Trade Commission, Department of Motor Vehicles, or the Texas Office of the Consumer Credit Commissioner depending on the disaster survivor's specific situation. For issues with insurance companies or adjusters, including public adjusters, the [Texas Department of Insurance](#) takes complaints. The Texas Attorney General also has a civil complaint process as well as information about disaster scams.

### 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)
- Identity Theft

### 8.3 Summary of Relevant Laws/Protections

#### **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.

For further information regarding scams involving COVID-19 vaccines and test, please visit the [Office of the Attorney General](#) and the [Federal Trade Commission](#).

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

Texas Door-to-Door Sales Law. In Texas, chapter 601 of the Texas Business & Commerce Code regulates the home solicitation industry and applies to a consumer transaction 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 two copies of a separate notice of cancellation that has been filled out with the last date on which a buyer may cancel and the proper address for the cancellation to be sent. 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 two copies of the 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 [Office of the Attorney General](#).

**C. *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 [Federal Trade Commission](#).

#### **D.     *Debtor/Creditor***

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

Disaster survivors 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 or “personal” 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 first. 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, 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 survivor 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 survivor’s fear of “bad credit” and missing payments. While credit has value, sometimes missed payments are unavoidable, and credit should not be valued above immediate needs and common sense.

Foreclosure rescue and 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 survivors 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.

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’ disputes. Texas law governing credit reporting is found at chapter 20 of the Texas Business & Commerce Code.

#### **E. *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:

1. Threats of violence or other criminal acts
2. Using profane language
3. Falsely accusing the consumer of fraud or other crimes
4. Failing to identify who holds the debt
5. Using a false name or identification
6. Misrepresenting the amount of the debt or its judicial status
7. Filing suit on a debt that is past the four-year statute of limitations

For further information regarding unfair debt collection practices, please visit the [Office of the Attorney General](#).

In addition, if the collector is not the original creditor, the Federal law—the Fair Debt Collection Practices Act—also has protections for a debtor. This includes a penalty for collecting a debt that is not owed.

#### **F. *Collections after Judgments in Texas***

In general, Texas has no wage garnishment other than for child support and taxes. One exception is if a consumer's paycheck comes from another state that allows garnishment, something that is unfortunately more common with direct deposit. The federal government can also garnish wages for defaulted student loans and other federal debts, including federal taxes and medical bills from military hospitals.

In general, Texas is not an easy place for creditors to collect 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.

Bank accounts are vulnerable, 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. Because of this, a consumer with a judgment against them should be wary of having money in the bank and may wish to consider bankruptcy or settling the judgment on their own terms to avoid having their bank account wiped clean.

Even with a judgment, a creditor cannot take a consumer's bank account funds if the money is from social security, social security disability, child support payments, unemployment, and several other forms of exempt funds. If a creditor has taken money from a bank account that should not have been eligible for garnishment, such as child support payments or money belonging to a third party when the debtor is only a signatory on the account, the debtor can file a form with the court and mail a copy to the creditor and bank stating why this money should not have been taken. A hearing should be set as soon as possible on this.

While hardly anyone wants to file bankruptcy, a bankruptcy discharge may be the absolute best solution for some consumers, particularly after being hit by a disaster. A bankruptcy can wipe out many debts, and debts that have gone to judgment can be discharged as well. 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](#).

For further information regarding debt collection and credit repair, please visit the [Federal Trade Commission's page on credit](#).

#### **G. 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](#)". 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 [Federal Trade Commission](#).

#### **H. 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 [here](#). For further information about price gouging, please visit the [Office of the Attorney General](#).



## **I. *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, people 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\(q\)](#).

In an area hit by a physical disaster, home equity fraud can be one way that untrustworthy contractors attempt to get homeowners to pay them for work done. While a home equity loan is a legitimate and common way of getting funds for home repair, the money should not be paid out all at once and especially not before work has commenced. In addition, there are generous cancellation rights with a home equity loan and a failure to provide notice of these rights can provide a remedy to victims of scams.

Another common statutory error made by scammers is to leave one or more homeowners off the loan. Everyone on title to the home must be on the home equity loan. Failure to do this may be a sign of an unsavory lender, but it may also provide a way to help the victim fight fraudulent taking of equity.

For further information regarding Home Equity Fraud, please visit the [Office of the Attorney General](#).

## **J. *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.

During a disaster, family members suffering from financial issues may move in together temporarily, and sometimes it is then that identity theft or an identity mix-up occurs. Another potential problem is that papers with identifying information may be left in a damaged home or vehicle, and a person's identity can be stolen with this information. Remember, no matter what a debt collector or creditor tells a consumer, 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. It may be more expeditious to have a consumer file a police report to help convince a stubborn creditor that they are sincere about the ID theft; however, those advising disaster survivors should remember that not everyone has had positive experiences with law enforcement. A police report is not mandatory, common sense shows it is not proof of anything, it is simply the debtor telling an officer of the problem, and rarely is any investigation performed. An ID theft victim should not be told they must contact law enforcement as this is not true—debt is a civil issue.

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

1. 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. After calling, following up with a quick letter to each creditor is the best practice, and the consumer should keep a copy of these letters. That copy can be a scan or photo taken with their phone as long as the photo shows the complete, legible letter. Sending the notice certified mail provides a receipt but may be cost prohibitive to some victims and is not mandatory.
2. Contact each 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. Currently, all of the “Big Three” reporting agencies are providing free credit reports monthly to consumers, so people should not pay money for these reports. Paying for a credit score is also unnecessary as this does not show what is reported.
3. Change the passwords, PIN numbers, and login information for all their potentially affected accounts, including their email accounts, and any accounts that use the same password, PIN, or login information. Do not forget money transfer apps like Venmo, Cash App, or PayPal!
4. Contact their police department, report the crime, and obtain a police report.
5. Go to the [webpage of the Federal Trade Commission](#), report the ID theft and create an identity theft recovery plan.
6. Decide whether they want to place a security freeze on their credit report.
7. 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.
8. Review their other credit card and bank statements and take action to remove or dispute unauthorized charges or debits.
9. If taxes are involved, then the [IRS website](#) has specific guidance.
10. 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 they are a victim of identity theft. If an individual is granted this type of court order, they 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 should not be the first step in an identity theft situation.

Abuse, including financial abuse, by domestic partners or family members is another thing that increases in times of stress, and obviously a disaster is a stressful time. Texas law is progressive in this area, and victims of financial abuse are not liable for coerced debt, which is defined as debt that was taken out in their name by force or coercion but can also include debts their abuser took out in their name without their knowledge. See [Coerced Debt Toolkit: Addressing Identity Theft for Survivors of Financial Abuse](#).

For further information regarding Identity Theft, the federal website [identitytheft.gov](#) has information and forms.

#### **K. COVID-19 and Public Health Emergency (PHE)**

1. COVID-19 scams: consumers should still remain aware of potential risks even though the PHE has ended.
  - IRS scams, in which perpetrators pretend to be IRS employees to glean financial information from the victim.
  - 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.
  - Gift card scams, in which various stories are told to vulnerable people to make them purchase gift cards and provide the gift card numbers to scammers, who then use the money for their own purposes.

[Chapter 17 of the Texas Business and Commerce Code](#) makes such scams illegal under state law.

The employment scams in particular have targeted consumers looking for safe ways to make money. People need to be wary of any job where they are told they are setting up the office in their city, and they are sent checks to deposit. These are almost always scams—employers do not send cashier’s checks to brand new employees to deposit, no matter the excuse. The scammers are cancelling the checks and consumers are left with negative accounts.

For further information regarding scams involving COVID-19, please visit the [Office of the Attorney General](#) and the [Federal Trade Commission](#).

## 2. COVID-19 Debtor Protections-Mortgage Relief

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, put in place protections for homeowners with federally backed mortgages that were struggling financially due to COVID-19. With the public health emergency ending in May 2023 these specific protections are now time sensitive. For loans backed by the FHA, USDA, or VA, the deadline for requesting an initial forbearance was June 30, 2021. For loans backed by Fannie Mae or Freddie Mac, the deadline was February 28, 2021.

Forbearance and mortgage modifications can still be options in certain situations when financial hardships can be proven to prevent foreclosures. Talk to the lender to find out what is applicable in certain situations.

## 3. Student Loans during COVID

The CARES Act § 3513 provided 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 nine million student loan borrowers not covered by the Act.

While student loan payments were suspended, the loans did 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 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).

The protections mentioned above do not extend to private student loans or to state student loans, such as Hinton-Hazelhurst

#### **8.4     Websites for Regulatory Agency Directives / Announcements**

- [Price gouging](#)
- Consumer protection—[home solicitation](#) and [buyer's remorse](#)
- [Fair credit billing](#)
- [Disaster scams](#)
- [Mortgage foreclosure "rescue"](#)
- [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 website:**

[www.texasattorneygeneral.gov/cpd/file-a-consumer-complaint](http://www.texasattorneygeneral.gov/cpd/file-a-consumer-complaint)

**Texas Attorney General: Consumer Division Website:**

[www.texasattorneygeneral.gov/cpd/consumer-protection](http://www.texasattorneygeneral.gov/cpd/consumer-protection)

**Consumer Protection Hotline:** 1-800-621-0508

**General Hotline:** 1-800-252-8011

#### **Office of the Attorney General**

Phone: 1-512-463-2100

Fax: 1-512-475-2994

300 W. 15th Street

Austin, TX 78701

#### **Better Business Bureau**

##### **BBB of Greater Houston and South Texas**

Website: [www.bbb.org/houston](http://www.bbb.org/houston)

E-mail: [info@bbbhou.org](mailto:info@bbbhou.org)

Phone: 1-713-868-9500

1333 W. Loop South, Suite 1200

Houston, TX 77027

##### **BBB of Southeast Texas**

Website: [www.bbb.org/southeast-texas](http://www.bbb.org/southeast-texas)

E-mail: [info@bbbsetexas.org](mailto:info@bbbsetexas.org)

Phone: 1-409-835-5348

Fax: 1-409-838-6858

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 licensed by your local government, such as El Paso and Laredo;
- **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**;
- **Get all amendments to contracts put in writing and signed by both parties**, and
- **File complaints** with appropriate regulatory agencies if confronted with potential fraud or abuse.
- Perhaps most importantly, consumers should **take their time** with decision making, which can feel impossible after a disaster. However, a contractor pushing a homeowner to sign immediately is suspect, and a consumer should feel free to get at least two estimates and to take time to consider options.

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. Local television affiliates' contact information are available at [ABC](#) or [FOX](#).

[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 [Office of the Attorney General](#).

### ***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. Sometimes, deferred maintenance can make the need to repair disaster-related damage harder to address, and 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 their 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 they 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 [here](#).

**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 themselves.

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. Also, homeowners should remember that giving someone else a power of attorney does not mean they cannot still sign (or cancel) contracts in their own name.

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

Some financial predators prey on homeowners during the foreclosure process. They claim to be experts who can 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 at [Making Home Affordable](#). To speak with a housing counselor now, call 1-888-995-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 them.

**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, their 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 service or coverage. Sometimes financial hardships will create opportunities for eligibility in supplemental programs that can help with costs. For example: TDHCA Comprehensive Energy Assistance Program (CEAP) might be able to help with energy costs. If in need, ask your provider if any options exist.
- **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, they should contact the lender in advance.

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

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

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

- Total amount owed on a bill, including the interest to be added each year;
- Amount of monthly payments;
- Due dates that payments must reach the collector; and
- Address where payments must be mailed.

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 they speak with and date, time, and details about the conversations. If the debtor arranges a payment agreement, they 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 the [Federal Trade Commission](#).

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 be the best option for some disaster survivors 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 1-800-252-9690 or visit the [State Bar's website](#) and click “Find a Lawyer,” then “Contact the *Lawyer Referral & Information Service*”.

**Q. 8-9      *What happens when debtors fail to pay?***

Debtors are not criminally liable for owing debts; however, a creditor may file a civil lawsuit against them to collect the debt, and a court judgment will give them the right to collect any nonexempt assets. Also, the creditor has the right to report the unpaid debt to a credit reporting agency.

Auto loan contracts usually permit the creditor to repossess a car without advance notice after a borrower’s failure to make payments or if the borrower fails to keep the vehicle insured. 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 creditor may sell the car and may 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 creditor may discontinue service or withhold reconnection, even if the debtor moves to another residence. The creditor may also sue to try to collect the unpaid balance.

Under federal and state laws, 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

You should be aware that insurance is not one size fits all. For example, homeowner's insurance does not typically cover damage from flooding. Further, if you live in certain high-risk counties near the Texas Gulf Coast, you may be required to acquire a separate policy in addition to your homeowners insurance to cover damage caused by windstorms, hurricanes, and hail. As a result, when a disaster causes major damage to your property, you should contact your insurance agent or company to confirm what coverage you have available under your policies. Additionally, you should make sure to contact your insurance provider as quickly as possible, as most policies usually include 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: First, if the damage is below your deductible, your insurer won't pay for it, so there is no benefit to filing a claim. Second, a claim that goes on your record can result in getting charged higher premiums in the future.

After major catastrophes, 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 Texans through government agencies:

[Texas Department of Insurance](#)

1-800-252-3439

**Website:** [www.tdi.texas.gov/consumer](http://www.tdi.texas.gov/consumer)

**Mail:** Consumer Protection, P.O. Box 12030, Austin, TX 78711-2030

[Texas Office of Public Insurance Counsel](#)

**Phone:** 1-877-611-6742

**Email:** [help@opic.texas.gov](mailto:help@opic.texas.gov)

**Contact:** [www.opic.texas.gov/contact](http://www.opic.texas.gov/contact)

**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 to the 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 visit this [website](#). For more help, e-mail [License@tdi.gov](mailto:License@tdi.gov), or call 1-512-676-6500 or 1-800-252-3439. 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 financially benefit from repairing, rebuilding, or salvaging your home. To learn more, visit the [Texas Department of Insurance](#).

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" or brand new). Some items will be covered for their Actual Cash Value ("ACV" or used/as-was). These limits can be confusing. Read and reread your policy as best you can and stand up for your right to be reimbursed fairly.

Remember that 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' web page](#).

## **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 homeowners 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, such as 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. Find more information [here](#).

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 reflect an accurate value of your property just before the damage occurred.

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 1-877-336-2627 or go to [www.floodsmart.gov](http://www.floodsmart.gov). You can also seek help from the [Office of the Flood Insurance Advocate](#).

For more information see [FEMA's flood insurance manual](#). For more detailed information on navigating a flood claim and reaching a fair settlement, visit the nonprofit United Policyholders website [www.uphelp.org](http://www.uphelp.org) and enter the word "flood" in the search box.

### **9.3 Wind and Hail Insurance**

If windstorms, hurricanes, or hail damages your property, you may have coverage for that damage under your normal homeowners insurance policy. However, property owners located in 14 counties along the Gulf coast are exempt from windstorm coverage under their normal insurance policy (see FAQ below for complete list of counties). As a result, if you are in one of these counties, you may be required to purchase separate insurance from the Texas Windstorm Insurance Association (TWIA) or another private insurer to obtain coverage for damage caused by windstorms. A TWIA policy typically covers the following types of damages caused by windstorm or hail:

- Residential: Dwellings, personal property, manufactured homes
- Commercial: Commercial buildings, business personal property, townhouses, and condominiums
- Miscellaneous Items: Including but not limited to signs, fences, swimming pools, and flagpoles

Wind-driven rain damage will be covered by a TWIA policy if it enters through an opening in your roof or wall that was caused by the direct force of wind or hail. However, a TWIA policy will not cover damage caused by flooding, rain, or a storm surge. If you do not live in one of the 14 coastal Texas counties, your homeowners insurance policy should typically cover damage associated with windstorms or hail. However, those policies generally do not cover certain kinds of windstorm-related damage, including:

- Flooding
- Continuous water leaks
- Mold removal, except to repair damage caused by a covered risk
- Wind or hail damage to trees and shrubs

### **9.4 FAQs—Auto**

Typically, homeowners policies do not cover automobiles or parts even if your car was damaged in a disaster, or in a garage, carport, or outside. A common consumer practice is to "bundle" home and auto coverage to receive discounts, but the coverage forms applicable to each type of property are different. A claim for damage to an auto should then be reported to the appropriate insurance agency or company for your auto policy. The Texas Department of Insurance has additional information regarding "totaled" vehicles [here](#).

**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. Under the primary comprehensive coverage, the insurance company is only obligated to pay the current pre-loss market value of your vehicle. Requesting a copy of the valuation report and reviewing its details for accuracy can be of tremendous value. You can also 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](#).

**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](#) (1-800-621-3362) or the [Red Cross](#) (1-800-733-2767) to assist with immediate needs. You may also apply with the [Small Business Administration](#).

**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?***

Maybe. [Texas statute 1952.301\(1\)](#) (Texas Insurance Code) prohibits insurance companies from specifying the brand, type, kind, age, vendor, supplier, or condition of parts or products that may be used to repair the vehicle but that does not mean the use of used parts is not “reasonable.” 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?***

Commonly, disputes about the value of a vehicle can be attributed to an error in the valuation method completed. Shortly after the accident it is best to go online and find comparable vehicles. Print out the advertisements or save them as PDFs. Be as precise as possible in locating vehicles with similar options, mileage, and features. Also, preserving various value guides such as Kelley Blue Book, the National Auto Dealers Association, or others by printing or saving the results as PDFs can be helpful.

Vehicle valuations require adjusters to enter data in a systematic way, otherwise, errors can cause a disparity in the resulting value. Request the adjuster provide you with a copy of their valuation. Look for discrepancies between what you know about your vehicle and the comparable vehicles in the report. Also, ask the adjuster to explain how the settlement amount was derived.

After gathering the available information, look back to the examples you found shortly after the accident occurred. The adjuster should be open to receiving your observations of the errors in the valuation report and the comparable vehicles found near the time of the accident. If you still disagree, options exist. Retaining a Public Adjuster to address the damages is one such option. If injuries occurred in the accident, commonly the personal injury attorney will handle the negotiation of the total loss vehicle. Otherwise, the personal auto policy allows you to demand an appraisal of the vehicle. 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 1-888-368-4689.

**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?***

Always know what you are agreeing to when you accept a check from the insurance company. If a dispute about the value exists, only accept an undisputed funds payment. You should not endorse a check before knowing exactly what your acceptance of the check means. Discussing your concerns with the adjuster is a start, but always recap your understanding of the discussion in writing back to the adjuster.

Nowadays, insurance company letters and checks are seldom sent from the same central processing center, making it difficult for the check to accompany a letter of explanation. This means that reading both sides of the check carefully, as well as any other documents or communications, is very important.

Some insurance companies include a statement of "full accord and satisfaction" or have a release from further liability disclaimed 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.

**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 typically is only available to brand new cars and could apply to the first 12 months following the purchase or some apply longer. Commonly, the vehicle would need to be a total loss for new car replacement coverage to be triggered.

**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](#).

**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.

One could consider repairing a vehicle determined to be a total loss, but this comes with additional challenges (namely, ensuring the safety of traveling public). The Texas Department of Insurance has information and links on its [website](#) should you be considering repair.

**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 1-888-368-4689 or [www.txdmv.gov](http://www.txdmv.gov). Additionally, you may want to contact the lienholder to find out whether retaining the salvaged car would impact the lien.

Additionally, the payment from the insurance company will typically be reduced by the salvage quote they received from a salvage company. Depending on the salvage market, this amount could be significant. The adjuster should be able to provide you with a transparent calculation should you desire to retain the salvage.

**Source:** This question-and-answer subsection utilizes information provided by the [Texas Department of Insurance](#).



## 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 damage 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](#).

## 9.6 FAQs—Homeowners

### ***Q. 9-22 What's the difference between the types of homeowners policies? How does a dwelling policy differ from a homeowners policy?***

Homeowners 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 homeowners 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 homeowners 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 homeowners or renters 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 payments address the increased cost of living incurred because of a covered peril. Mortgage payments, for example, are your customary cost of living, and your responsibility to make this payment does not stop in the event of a loss. The cost of a temporary residence, such as a hotel, apartment, or home would be the additional living expense the policy would look to reimburse, 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. Another item to consider is food. If you normally spend \$100 a month on dining out but following a loss where your kitchen is damaged or the hotel room lacks the ability to cook, the increase over the customary spend of \$100 can be covered under ALE.

### ***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?***

Most insurance policies require an endorsement adding coverage for sewer, sump, overflow, or back-up. While it depends on the terms of your specific policy, policies commonly exclude water or sewage from

outside the residence premises plumbing system that enters through sewers or drains. Reviewing your policy and contacting your insurance company or agent regarding coverage before a loss occurs to address this coverage is a great idea.

**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 homeowners policy cover this loss?***

It depends on your policy. Some policies could see this as part of the flood claim, while others could see this as an entirely separate event. For theft to be covered, most policies require signs of forced entry. 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 homeowners 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 rainwater came in through the roof. I don't have flood insurance, but I do have homeowners insurance. What, if anything, may be covered under my homeowners 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 homeowners 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. The Reservation of Rights letter must include information as to why the insurer does not believe coverage applies and specifically cite the precise language in the policy. While you must continue to comply with the insurer's investigation, getting professional help from a Public Adjuster or Attorney at this point could save you time and stress.

**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 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 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, homeowners, 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 must pay out of your pocket before the insurance company will pay. Some homeowners 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 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.
- Additionally, you may want to contact the [Office of Consumer Credit](#) at 1-800-538-1579.
- 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 or 1-877-276-5550.

- 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; visit their [website](#) for your local contact.

***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 under a sewer backup policy or a standard homeowners, renters, 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) or the [National Flood Insurance Program](#).

- If you have a concern about a private mortgage lender, you should contact the [Federal Trade Commission](#) (FTC) at 1-877-382-4357.
- If the lender is a state-chartered savings and loan, or bank, contact the Texas Savings and Loan Department at 1-512-475-1350 or 1-877-276-5550.
- If the lender is a Federal Chartered Lender, contact the Office of the Comptroller of the Currency at 1-202-649-6870.

- In some instances, the U.S. Department of Housing and Urban Development (HUD) can help. Call HUD at 1-800-225-5342.

***Q. 9-40      Wind caused my tree to fall on my house, which caused damage to my roof. Does my homeowners 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 homeowners 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 homeowners 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 homeowners 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](http://www.twia.org). If you need to file a claim or an appeal, you may do so by going to their [website](#) 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](#).

***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 1-800-788-8247, option 1, or email [claims@twia.org](mailto: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](mailto: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 homeowners 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 homeowners 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 homeowners policy cover mold damage from the flood water?***

Typically, homeowners 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 themselves 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 [here](#).

***Q. 9-53 The food in my refrigerator spoiled because of loss of power in my area. Will my homeowners policy pay for the loss?***

If the power failure results from a peril covered in the policy and is off your premises, most homeowners 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 homeowners policy?*

Homeowners 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](#).

**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 their own insurance to be cancelled, lapse, or if they have 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 homeowners or flood insurance. 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 will 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\*](#).

## **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 1-800-638-6620. 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 an 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 is available 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](http://www.floodsmart.gov).

**Source:** This question-and-answer subsection utilizes information provided by the [Texas Department of Insurance](#).

**9.9      FAQs—Texas Windstorm Insurance Association (TWIA)—Wind and Hail**

**Q. 9-75      *What is TWIA?***

TWIA is a residual market property insurance company and is not a state agency. These residual markets are created by state law to provide consumers with another alternative for insurance when coverage is unavailable through traditional private sector insurance carriers. When the private sector determines the risk of loss is too great and is unwilling to write coverage voluntarily, applicants can seek coverage through the residual market mechanism. The Association was created in 1971 by the Texas Legislature to provide wind and hail insurance in the Texas seacoast territory.

**Q. 9-76      *Are Texas FAIR Plan and TWIA the same?***

Texas FAIR Plan (TFPA) is a separate company from TWIA and provides coverage for all areas of the state. For more information about TFPA, please visit their [website](#).

**Q. 9-77      *What does a TWIA policy typically cover?***

Damages caused by windstorm or hail. There are three types of coverage:

- Residential: Dwellings, personal property, manufactured homes
- Commercial: Commercial buildings, business personal property, townhouses, and condominiums
- Miscellaneous Items: Including but not limited to signs, fences, swimming pools, and flagpoles

**Q. 9-78      *What does a TWIA policy NOT cover?***

Damage caused by flooding, rain, or storm surge. Wind-driven rain is covered if it enters through an opening in your roof or wall that was caused by the direct force of wind or hail.

**Q. 9-79      *Who can get coverage under TWIA, and how can you get it?***

First, contact your insurance agent or, if you don't have an agent, locate a Texas-licensed property and casualty agent. Your insurance agent will help you determine whether you are eligible for TWIA coverage. To be eligible for a TWIA policy, applicants and properties must meet certain criteria defined by the Texas Legislature:

- Applicants must have been denied coverage by at least one insurer in the private market
- Properties must be located in the designated catastrophe area
- Properties must be certified by TDI (WPI-8/WPI-8-E)

- Properties located in specified flood zones (V zones) that were constructed, altered, remodeled, or enlarged after September 1, 2009, and that can obtain flood insurance through the NFIP must provide proof of flood insurance coverage
- Properties must be in an insurable condition as specified by the Association in the Plan of Operation

If you are eligible for coverage, your agent can submit an application for coverage to TWIA on your behalf. TWIA policyholders may choose to pay TWIA directly or through their agent. Once the application is approved, TWIA will issue the policy.

***Q. 9-80 Which locations currently are considered designated catastrophe areas?***

TWIA policies provide coverage for residential and commercial property located within the area designated by the Commissioner of Insurance. This area currently includes all 14 first tier coastal counties and parts of Harris County east of Highway 146. The specific counties are Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio, and Willacy. When the property is located inside the city limits and east of Highway 146, the following portions of Harris County are also included: La Porte, Morgan's Point, Pasadena, Seabrook, and Shore Acres.

***Q. 9-81 What is a Certificate of Compliance? And why are they a TWIA eligibility requirement?***

If you are a Texas coastal property owner who needs to get wind and hail insurance through TWIA, the [Texas Insurance Code Chapter 2210](#) requires your property to be certified as meeting windstorm building code requirements in your area. This Windstorm Certificate of Compliance must be provided to TWIA before the property can be eligible for TWIA coverage. Without a Certificate of Compliance, TWIA lacks evidence that the structure conforms to applicable building codes, and it may be considered uninsurable and ineligible for coverage with TWIA.

***Q. 9-82 Who issues the Certificate of Compliance?***

Effective June 1, 2020, the Texas Department of Insurance (TDI) began issuing Certificates of Compliance for completed improvements in addition to the Certificates of Compliance it already issues for ongoing improvements. The last day TWIA accepted applications for Certificates of Compliance for completed improvements was May 31, 2020. Windstorm Certificates of Compliance (WPI-8s/WPI-8-Cs) are an important eligibility requirement for TWIA as well as some private insurance companies. Certificates of Compliance issued by TWIA remain valid after June 1, 2020. Property owners do not have to re-certify their structures in order to remain eligible for TWIA insurance.

***Q. 9-83 How does this change affect policy holders?***

Policyholders and the engineers they hire to help certify a structure must apply to TDI rather than TWIA for a Certificate of Compliance for completed improvements. Certificates of Compliance issued by TWIA remain valid and property owners do not have to re-certify those same structures to remain eligible for TWIA insurance unless they update the structures after being certified.

**Q. 9-84      *What are some of the requirements for certification through TDI?***

TDI has provided additional oversight of the certification process for completed improvements such as engineers being required to affirm that a completed improvement is constructed in accordance with its design (i.e., the construction will be evaluated, not just its design). TDI is also allowed to:

- Deny an application if an engineer's evaluation is not fully documented and
- File complaints to the Texas Board of Professional Engineers and Land Surveyors related to the engineering work of a professional engineer.

To learn more, visit [Windstorm Inspections](#) or [Completed Construction Certificates](#).

**Q. 9-85      *My property has been damaged by wind or hail. How do I report a claim with TWIA?***

There are three ways to report a claim: 1) through the online Claims Center, 2) by calling 1-800-788-8247, or 3) by contacting your agent.

Once you've reported your claim, a TWIA representative will contact you as soon as possible. If necessary, please make any temporary or minor repairs to protect your property from further damage. Remember to take photos of the damage and keep receipts and records of payment for any temporary repairs. Do not begin making permanent repairs until a TWIA-assigned adjuster or representative has contacted you and inspected your property. Learn more about the TWIA claims process [here](#).

**Q. 9-86      *How can I find out the status of my TWIA claim?***

Visit [Claims Center](#) to check the status of your claim, payment information, send messages to TWIA, and find the names and contact info for representatives assigned to your claim. You can also call 1-800-788-8247.

**Q. 9-87      *Why is the mortgagee's name on the check for my damage?***

The mortgagee has a financial interest in the dwelling and is required to be included as the payee on any dwelling claims. Learn more [here](#).

**Q. 9-88      *How long do I have to report a claim?***

TWIA recommends you report your claim as soon as possible. The deadline to report a claim is one year (365 days) from the date on which the damage to the property occurred. The Texas Department of Insurance Commissioner, on a showing of good cause, may provide an additional 180-day extension. You will need to contact the Texas Department of Insurance to request a claim extension. This is done by sending a signed letter to the Chief Clerk that explains why you weren't able to report a claim by the one-year deadline. You may email the letter to ([chiefclerk@tdi.texas.gov](mailto:chiefclerk@tdi.texas.gov)) or mail (Texas Department of Insurance, Chief Clerk, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104).



**Q. 9-89      *What should I expect after I report a claim?***

Once you report your claim, a TWIA claim representative will contact you to discuss the next steps, answer any questions you may have, as well as provide you with additional information. TWIA will send you and your agent a Claim Notice Acknowledgment and Assignment letter. This letter will include contact information for any adjuster and/or adjusting firm assigned to inspect the damages being claimed. The adjuster will contact you to schedule an inspection.

Please keep a record of any related repair expenses and receipts and take photos of the damage prior to making any temporary repairs. Copies of these records need to be provided to your TWIA claim representative.

Learn more about the [TWIA claims process](#).

**Q. 9-90      *What is involved with the inspection of my property?***

If an in-person inspection is required, the field adjuster must fully inspect the damages claimed, as well as areas around the insured property that may have been damaged. TWIA asks that you allow the TWIA representative access to the damaged and potentially damaged property as well as the surrounding areas in order to thoroughly and accurately evaluate your claim.

**Q. 9-91      *Where can I make a complaint about TWIA?***

You can make a formal complaint about TWIA to the [Texas Department of Insurance](#).

Another resource to resolve concerns about TWIA claims is the Texas Department of Insurance's Coastal Outreach and Assistance Services Team (COAST). Visit their [website](#).

**Source:** This question-and-answer subsection utilizes information provided by the Texas Windstorm Insurance Association and the Texas Department of Insurance: [www.twia.org/frequently-asked-questions](http://www.twia.org/frequently-asked-questions); [www.twia.org/coverage-eligibility](http://www.twia.org/coverage-eligibility); [www.tdi.texas.gov/wind](http://www.tdi.texas.gov/wind)

## **10.0 HEALTH-CARE ISSUES**

### **10.1 Overview**

After a natural disaster, lawyers may face questions ranging 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**

Below is a list of some of the most common health-care questions you may be asked and issues which you may face in the wake of a natural disaster. Although the list is not comprehensive, it will help you think through your potential responses.

- Q. 10-1** I lost my job as a result of the disaster. What will happen to my health insurance?
- Q. 10-2** What if my employer drops health insurance coverage altogether?
- Q. 10-3** When I go to the doctor’s office, I am usually asked to sign a “HIPAA” form. What is HIPAA?
- Q. 10-4** Can I request that my personal health information not be disclosed to anyone?
- Q. 10-5** What personal information of mine is covered by HIPAA?
- Q. 10-6** How can I find out if my PHI has been wrongfully used or disclosed?
- 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?
- Q. 10-8** I lost all of my health insurance papers and need to file a claim. What should I do?
- Q. 10-9** I’m enrolled in Medicare Part C (Medicare Advantage) but can’t access any of my usual providers. What do I do?
- Q. 10-10** How can I get my prescriptions filled?
- Q. 10-11** I’m enrolled in a Medicare Part D Prescription Drug Plan. How can Medicare help me with my prescriptions?

**Q. 10-12** What if I need extra food stamp assistance?

**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?

**Q. 10-14** How can I get help with funeral assistance if someone I loved died in the disaster?

Later in the chapter, this guide will address each question and provide information to consider in your response to these issues.

### **10.3 Summary of Relevant Law**

#### **A. *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.

#### **B. *Provider/Patient Relationships***

While healthcare 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 (i.e., 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    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 at least one of the following occurs:

1. the employment ends (unless the employee is fired for gross misconduct),
2. the person loses coverage as a dependent of the covered employee, or
3. the covered employee dies.

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 typically 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 inform 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 number: 1-855-797-2627). If your group health plan coverage was from a private employer, contact the Department of Labor at 1-866-487-2365, 1-817-861-2150, or 1-866-487-9243. 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](#).

**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 1-800-252-3439 to find a broker in your area.

Whether your employer must offer you health insurance depends on the size of your employer. Under the Affordable Care Act (ACA), 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 considers you to be 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 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](#), or visit your nearest Texas Health and Human Services Commission (TxHHSC) office.

Additionally, loss of healthcare coverage from your employer may count as a Qualifying Life Event that allows you to apply for health insurance through [healthcare.gov](#) outside of the regular enrollment period. You will need to complete an application to determine your eligibility and costs.

## 10.5 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 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 provides a summary of [what patient information can be shared](#) in order to assist in disaster relief efforts.

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 an 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](#).

To file a complaint, either fill out a [Health Information Privacy Complaint \(PDF\) Form](#) or file your complaint online by visiting the [OCR online portal](#). 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 will 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.

**Source:** This question and answer subsection uses information provided by the U.S. Department of Labor at [www.dol.gov/general/topic/health-plans/newborns](http://www.dol.gov/general/topic/health-plans/newborns) and [marketplace.cms.gov/outreach-and-education/special-enrollment-periods-available-to-consumers.pdf](http://marketplace.cms.gov/outreach-and-education/special-enrollment-periods-available-to-consumers.pdf).

## **10.6    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 the documents.

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 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: [www.dol.gov/agencies/ebsa/key-topics/health-and-other-employee-benefits/claiming-benefits](http://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 are enrolled in original Medicare and need medical attention but cannot access your regular provider during a disaster or emergency, 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 [website](#) 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.

## **10.7      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 1-512-776-2150, 1-888-963-7111, or 1-800-735-2989. To find an open pharmacy, go to [this website](#), 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 **at least 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 a shelter should check with shelter staff for prescription assistance.

Those eligible for the federal Emergency Prescription Assistance Program (EPAP) can receive a thirty-day supply of medication. Prescriptions can be renewed for free every 30 days for as long as EPAP is active. 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](#) 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 [Prescription Drug Plan and Medicare Advantage - Prescription Drug Plan Sponsors](#). Other helpful links can be found at [Centers for Medicare and Medicaid Services](#).

## **10.8 Medicaid**

If you are on Medicaid, 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](http://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. You should call 2-1-1 to process your application as a Texas resident.

Sometimes in a disaster, your co-pay and enrollment fee for CHIP may be waived if you live in a county in which there has been a declared 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 Office number provided to you in your Hearing Notice. If you do not have your Hearing Notice with you, you should call 2-1-1 to be connected to a representative. 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 1-800-641-9356. You may also reach out to the Ombudsman at 1-877-787-8999 for more information.

## **10.9 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 assists you in purchasing fruit and vegetables, cereal, bread, and milk, as well as infant formula. If you need more information, you should visit [TexasWIC.org](http://TexasWIC.org) or call 1-800-942-3678 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 1-877-541-7905 or call 2-1-1 and after picking a language, choose option 2, or visit [yourtexasbenefits.com](https://yourtexasbenefits.com). See [Disaster Assistance](#) for more information.

***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](https://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 to see if the deceased individual had a private life insurance policy that could help cover the costs of the funeral. If so, you should file a claim with the life insurance policy and provide the appropriate documentation. If you are not a beneficiary of the policy, you may not be able to file a claim.

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 U.S. Department of Veterans Affairs at 1-800-827-1000 to find out what other benefits might be available.

## **10.10 Useful Websites**

- For information concerning disaster assistance services, visit the [Texas Department of State Health Services website](#) and [CASPER](#) (Community Assessment for Public Health Emergency Response).
- For COVID-19-specific information including minimum standard health protocols for individuals, businesses, and employers; types of testing and public testing sites; vaccine development and distribution; and Executive Orders related to opening the state, visit the [Texas Department of State Health Services COVID-19 website](#).
- For Health and Human Services guidance and bulletins regarding HIPAA privacy law during the COVID-19 Public Health Emergency, visit the [U.S. Department of Health and Human Services website](#).

- See specific [DSHS announcements](#) for recent updates regarding health-care policies in Texas.
- Other helpful websites:

[Texas Health and Human Services Commission](#)

[Texas 2-1-1](#)

[Temporary Assistance for Needy Families \(TANF\)](#)

[Medicaid Texas](#)

[Texas Department of Insurance](#)

[Harris County Health Department](#)

[Red Cross](#)

## **11.0 PERSONAL BANKRUPTCY ISSUES**

### **11.1 Overview**

The damages and dislocation caused by a disaster are expected to make some individuals 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. Subchapter V of Chapter 11 is the most relevant to individuals who own small businesses.

#### **A. *Chapter 7***

A Chapter 7 case is sometimes called a “liquidation.” In any individual bankruptcy case, certain types of property that the debtor owns are exempt from creditors and will not be liquidated. 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 their 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.

## **B. Chapter 13**

A Chapter 13 case is sometimes called a “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 their debts over a 3-5 year period. Chapter 13 is available only to an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated debts of less than \$2,750,000 or an individual with regular income and such individual’s spouse (except a stockbroker or a commodity broker) that owe, on the date of the filing of the petition, noncontingent, liquidated debts that aggregate less than \$2,750,000. [11 U.S.C. § 109\(e\)\(1\)](#). (Under [11 U.S.C. § 104](#), the foregoing dollar figures are adjusted periodically; the figures provided throughout this section will be current until June 21, 2024.) 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 their 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.

## **C. Subchapter V**

Subchapter V is a subchapter of Chapter 11, and it is primarily used by small businesses that need to reorganize. In February 2020, the Small Business Reorganization Act was implemented to help small businesses reorganize by making it easier and cheaper than a regular Chapter 11 business reorganization. Subchapter V is available only to businesses that have debts less than \$7,500,000, and at least 50% of the debt must come from the commercial or business activities of the debtor. [11 U.S.C. § 1182\(1\)\(A\)](#). (Under [11 U.S.C. § 104](#), the foregoing dollar figures are adjusted periodically. In March 2020, the limit was increased from \$2,725,625 to \$7,500,000 to accommodate for hardships brought on during the COVID-19 pandemic. This limit is set to expire on June 21, 2024). Once a debtor files for subchapter V, the business

will continue to operate under the same management, and the court will appoint a trustee to monitor its operations. 11 U.S.C. § 1183.

Subchapter V differs from a Chapter 11 reorganization in a number of ways. In subchapter V, only a debtor may propose a plan of reorganization, and it must be filed within 90 days of the petition date. 11 U.S.C. § 1189. The debtor also does not need approval from the debtor's creditors to confirm the plan if the court finds the plan to be fair. 11 U.S.C. § 1191 (b). The debtor must pay all projected disposable income to its creditors for three to five years. 11 U.S.C. § 1191(c)(2). Debtors also do not need to file a disclosure statement describing how they will pay creditors. In sum, these changes make subchapter V a much more expeditious and cost-effective process for small businesses.

#### **D. 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 their debts, and their 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.

#### **E. 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.

#### **F. 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. The April 1, 2022 adjustments are contained [here](#). [Further adjustments](#) were made on June 21, 2022, and those are scheduled to remain in force until June 21, 2024.



#### 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 [here](#). Consult the website of the U.S. bankruptcy court for your particular federal district for updates and information.

- [Southern District of Texas](#)
- [Northern District of Texas](#)
- [Western District of Texas](#)
- [Eastern District of Texas](#)

There are a number of forms that debtors must file as part of the bankruptcy process. The forms can be found [here](#).

A particularly useful link which provides a good summary of the bankruptcy process under the BAPCPA can be found [here](#).

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 they make 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 they 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 they do 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 they plan 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.

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. The plan may provide for the cure of arrearages on a home mortgage, property taxes, and automobile loans and, in certain instances, 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 prerequisites to filing for bankruptcy?***

Before an individual debtor can file a bankruptcy petition, they (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 they requested credit counseling but were 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 [here](#).

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, payments to victims of international or domestic terrorism, benefits received due to disability or combat related injury/death, and payments made by the federal government in response to COVID-19. [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 their state. The median incomes for each state can be found [here](#). 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.” Disposable income excludes benefits received under the CARES Act, child support payments, foster care payments, and disability payments for a dependent child. If disposable income is greater than (1) 25 percent of the debtor’s nonpriority unsecured debt or \$6,000, whichever is greater, or (2) \$10,000, 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 cause for a period of up to five years or material hardship due to COVID-19 for a period up to seven years). [11 U.S.C. § 1322\(d\)\(2\)](#), [§1329\(d\)\(2\)](#). 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 of alcohol or drugs; (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 \$800 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 \$1,100 obtained within seventy days before filing are also presumed non-dischargeable. [11 U.S.C. § 523\(a\)\(2\)\(C\)\(i\)\(II\)](#).

**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.

Find more information about listing debts on a bankruptcy petition [here](#) (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](#) & [11 U.S.C. § 1328](#).

Find more information on discharge in bankruptcy [here](#) (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 this [resource](#) (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 they 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\(a\)\(2\)](#) & [362\(h\)](#).

**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.

Find more information [here](#) (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 obligation[s]," 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, 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 \$1,512,350 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) & [§ 362\(b\)\(2\)](#).

**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 they 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 a debtor's personal residence, known as the "homestead exemption." The BAPCPA imposes a \$189,050 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):

<b><u>ASSET</u></b>	<b><u>EXEMPTION</u></b>	<b><u>PROVISION</u></b>
<b>Homestead</b>	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	<a href="#">Tex. Prop. Code § 41.002</a>
<b>Personal Property Exemption (overall)</b>	Overall limit: Single Adult: \$50,000 Family: \$100,000  The following are specifically exempt, which means they are	<a href="#">Tex. Prop. Code § 42.001</a>



	<p>not included as part of the overall limit above:</p> <p>(1) current wages for personal services, except for the enforcement of court-ordered child support payments;</p> <p>(2) professionally prescribed health aids of a debtor or a dependent of a debtor;</p> <p>(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</p> <p>(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>	
<b>Personal Property Exemption (specific items)</b>	<p>The overall exemption above may include the following (within the aggregate limits above):</p> <p>(1) home furnishings, including family heirlooms;</p> <p>(2) provisions for consumption;</p> <p>(3) farming or ranching vehicles and implements;</p> <p>(4) tools, equipment, books, and apparatus, including boats and motor vehicles used in a trade or profession;</p> <p>(5) wearing apparel;</p>	<a href="#">Tex. Prop. Code § 42.002</a>

	<p>(6) jewelry not to exceed 25 percent of the overall limits above;</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>	
<b>Insurance</b>	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.	<a href="#">Tex. Ins. Code § 1108.051</a>
<b>Retirement Accounts</b>	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.	<a href="#">Tex. Prop. Code § 42.0021</a>

	<u>Note:</u> IRA or annuity contributions, except to Roth IRAs, in excess of the amounts deductible for tax purposes are not exempt.	
<b>College Savings Plans</b>	“a qualified tuition program of any state that meets the requirements of” IRS Code §529.	<a href="#">Tex. Prop. Code § 42.0021<sup>1</sup></a>
<b>Worker’s Compensation</b>	Worker’s compensation and death benefits.	<a href="#">Tex. Lab. Code § 408.201</a>
<b>Unemployment Benefits</b>	Benefits received are exempt if not mingled; right to future benefits is exempt	<a href="#">Tex. Lab. Code § 207.075(b), (c)</a>

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<sup>1</sup> 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.

**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. Use this convenient [tool](#) to find which legal aid provider serves your county or zip code.

**Houston area:**

[Houston Volunteer Lawyers](#)

(Primarily Harris County)  
1111 Bagby, Suite FLB300  
Houston, TX 77002  
1-713-228-0735

[Lone Star Legal Aid](#)

(Houston and Greater Southeast Texas)  
1415 Fannin St.  
Houston, TX 77002  
1-800-733-8394

**Dallas/Fort Worth**

[Dallas Volunteer Attorney Program](#)

1515 Main St.  
Dallas, TX 75201  
1-214-243-2236

[Legal Aid of NorthWest Texas](#)

(Dallas/Fort Worth and North and West Texas)  
600 East Weatherford St.  
Fort Worth, 76102  
1-888-529-5277

**Austin/San Antonio**

[Texas RioGrande Legal Aid](#)

(Austin/San Antonio and Greater West Texas)  
1111 N. Main Ave.  
San Antonio, TX 78212  
1-833-329-8752

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, for debts less than \$20,000, seek relief in a justice of the peace small claims court. 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 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 their 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, Subchapter V, 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 1-800-ASK-USPS (1-800-275-8777) 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](#).

**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. To file a complaint against or your bank or for additional information, visit [www.fdic.gov](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 Temporary Assistance for Needy Families (TANF) program, and the Special Supplemental Nutrition Program for Women, Infants, and Children (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 1-800-777-7328 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 [here](#) or by calling 1-877-541-7905.

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, expenses related to protecting their homes, 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 the [Texas Department of Health and Human Services](#).

#### **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](#).

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:

<a href="#">Bexar County</a>	1-210-335-2216
<a href="#">Dallas County</a>	1-214-653-7099
<a href="#">Collin County</a>	1-972-548-4185
<a href="#">El Paso County</a>	1-915-546-2071
<a href="#">Harris County</a>	1-713-274-8600
<a href="#">Hidalgo County</a>	1-956-318-2100
<a href="#">Tarrant County</a>	1-817-884-1195
<a href="#">Travis County</a>	1-512-854-9188

#### **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 the [Federal Trade Commission](#).

<a href="#">TransUnion</a>	1-800-680-7289
<a href="#">Experian</a>	1-888-397-3742
<a href="#">Equifax</a>	1-800-525-6285

## **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](#)  
[Immunization Unit—Central Office](#)  
1100 West 49th Street  
Austin, Texas 78756  
Phone: 1-800-252-9152

Additional information for patients and parents is available from Texas Health and Human Services [FAQ’s for Parents](#) and information for healthcare providers is available at [FAQ’s for Providers and Organizations](#).

## **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:

<a href="#">Bexar County</a>	1-210-335-2216
<a href="#">Dallas County</a>	1-214-653-7099
<a href="#">Collin County</a>	1-972-548-4185
<a href="#">El Paso County</a>	1-915-546-2071
<a href="#">Harris County</a>	1-713-274-8600
<a href="#">Hidalgo County</a>	1-956-318-2100



[Tarrant County](#)

1-817-884-1195

[Travis County](#)

1-512-854-9188

It is important that you maintain communication with your mortgage or mortgage servicing company if you are having issues making your monthly mortgage payment due to lost documents. The current mortgage servicer should have filed notification with the county clerk that it holds the mortgage on your property. The notification should provide contact information for you to use if you have lost your mortgage information.

## **12.8 Driver License or Identity Card**

If you need to obtain a replacement without changing any information on the front of the card, you may use the Texas Department of Public Safety Online Card Replacement found at [www.dps.texas.gov](http://www.dps.texas.gov). You will need to provide the following information:

1. Your driver license or identification card number;
2. Your date of birth;
3. The last four digits of your social security number; and
4. The audit number from your most recently issued card found on the bottom of your id or driver's license.

If your card has been lost, stolen, or destroyed and you do not have the information listed above, you must visit your local driver license office to obtain a replacement. To apply for a replacement driver license, commercial driver license, or ID card at your local driver license office, you must:

1. Complete the replacement application before making an appointment—the application can be found online at [www.dps.texas.gov](http://www.dps.texas.gov) and is also available at all driver license offices; and
2. Make an appointment at your local driver license office either online or at the driver license office.

At your appointment, you must provide the following documentation to the license and permit specialist:

1. Application replacement; and
2. Proof of Identity. Examples of primary and secondary identity documents and all other supporting documents can be found at [www.dps.texas.gov](http://www.dps.texas.gov). You are only required to provide one primary, secondary, or supporting document at your in-person office appointment.

If you have not previously provided the following documentation to the Texas Department of Public Safety when you first obtained your driver's license or ID, at your in-person office appointment you will also need to present:

1. U.S. Citizenship or, if you are not a U.S. Citizen, evidence of lawful presence;
2. Social Security Number;
3. Provide your thumbprint;
4. Have your picture taken; and
5. Pay an application fee.

More information regarding replacement driver's license and/or ID card can be found at [www.dps.texas.gov](http://www.dps.texas.gov).

## **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 [here](#), online filing available [here](#)). For further assistance, visit [Replace Your Green Card](#).

If you need to replace a Naturalization Certificate, Certificate of Citizenship, or Repatriation Certificate, you may apply for a replacement [here](#). 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](#)) and pay a \$555 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 [FEMA Flood Insurance](#). If you are having problems with your insurance agency or to file a complaint, contact the Texas Department of Insurance Consumer Help Line at 1-800-252-3439 or by visiting their [website](#).

## **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. Additional information available [here](#) and [here](#). 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 in to 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 [here](#).

**Note: Make sure that Medicare and Medicaid have updated mailing addresses if you are displaced from your home. There can be very important notifications of deadlines, coverage changes or requests for mandatory information from Medicare and Medicaid. If you miss those notifications due to a wrong address, your coverage can be negatively impacted.**

## **12.12 Passports**

If your passport is lost, you should report it lost by going online to the [U.S. Department of State website](#) 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 number: 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 ([download here](#)) 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 [U.S. Department of State](#).

### **12.13 Social Security Cards and Payments**

To replace a lost, stolen, or destroyed Social Security Card, visit the [Department of Social Security](#) or call toll-free 1-800-772-1213 (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 [here](#).

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](#).

If you have a problem with your Social Security payment, go to the nearest office of the Social Security Administration, call 1-800-772-1213 (TTY number: 1-800-325-0778), or visit [www.ssa.gov](http://www.ssa.gov). Most issues can be handled through your [my Social Security portal online](#) (log in or create an account). 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 on to [Office Closings and Emergencies](#). Social Security checks can also be direct deposited or put on an SSA-issued credit card (the US DirectExpress card). To replace your DirectExpress card, call 1-888-741-1115 or visit [DirectExpress](#).

**Note: Make sure the Social Security Administration has an updated mailing address if you are displaced from your home. There can be very important notifications of deadlines, coverage changes or requests for mandatory information from Social Security. If you miss those notifications due to a wrong address, your social security payments could be negatively impacted.**

### **12.14 Tax Documents**

You can order a copy of your past tax returns online using the [“Get Your Tax Record” tool](#). 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 1-800-908-9946 or by mail by completing and mailing either Form 4506, Form 4506-T, or Form 4506-T-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 the [IRS website](#).

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 1-800-829-1040. 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 their will cannot be proved, the person is considered to have died intestate, and their estate will be distributed according to state law.

You may want to consider taking your will to your local county clerk's records office. The office will keep the original will for safekeeping but will not make it public unless a formal probate action is filed.

**Note: If you update or change your will that has been filed with the County Clerk, it is important that the updated/changed will document be given to the County Clerk so that they can update their records.**

If you have executed a medical power of attorney, you may want to give a copy of the medical power of attorney to your doctor and the local hospital so that they can have a copy on hand for emergencies or if you become incapacitated and the original document is lost.

**Note: If you update or change your medical power of attorney that has been provided to your doctor and/or the hospital, it is important that the updated/changed medical power of attorney be given to those medical providers so that they can update their records.**

If you have executed a statutory power of attorney for property, you may want to give a copy of the power of attorney to your bank so that they can have a copy on hand in case your designated agent needs to access your bank account if you become incapacitated and the original documents have been lost.

**Note: If you decide to give a copy of the statutory power of attorney to your bank, make sure that your agent is trustworthy and will not try to obtain funds inappropriately. If you do not trust the person that you have appointed as your agent under a statutory power of attorney, you should strongly reconsider your choice. If you update or change your statutory power of attorney that was given to your bank, it is important that the updated/changed statutory power of attorney be given to the bank so that they can update their records.**

## 13.0 FAMILY LAW, CHILD WELFARE, & 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.<sup>1</sup> 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 a disaster and it is not in the police database?
- 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 (or other family member), 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 bring them back. What do I do?
- I have a pending child support/custody/divorce proceeding. What do I need to do to stay notified of any future hearings?
- Our court order requires exchanges at a location I cannot get to due to the evacuation. What should I do?

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<sup>1</sup> International Federation of Red Cross and Red Crescent Societies, *Unseen, unheard: Gender-based violence in disasters*, 20 (2015).

### **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 7B 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 current or former 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 as a criminal offense under [Tex. Pen. Code § 25.07\(g\)](#). Other violations can be punished by contempt of court, fines, or jail time.

There are many similarities between protective orders issued under Title 4 and Chapter 7B, but the most important distinctions are 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. § 7B.001](#), and there is no requirement to show a likelihood of harm in the future. [Tex. Code Crim. Proc. § 7B.003](#). The court must issue a protective order under Chapter 7B if the court finds that there are reasonable grounds to believe that the applicant is the victim of sexual assault or abuse, indecent assault, stalking, or trafficking. [Tex. Code Crim. Proc. § 7B.003](#). A sexual assault protective order may be requested for an adult or by a parent or guardian on behalf of a child victim against a family member or an unrelated alleged perpetrator. [Tex. Code Crim. Proc. § 7B.001\(a\)](#).

The duration of a family violence protective order typically cannot exceed two years. [Tex. Fam. Code § 85.025\(a\)\(1\)](#). However, in certain circumstances, the court can enter a family violence protective order that lasts longer than two years and, for sexual assault, stalking, or trafficking, protective orders up to the duration of the lives of the offender and victim. [Tex. Fam. Code § 85.025\(a–1\)\(1\)–\(3\)](#); [Tex. Code Crim. Proc. § 7B.007](#).

The protective order suit begins when an “Application for Protective Order” is filed. If a court finds, through information provided in the protective order application as required under [Tex. Fam. Code § 83.009](#), 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. 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](#).

A hearing on the protective order will be scheduled within 20 days of the issuance of the temporary ex parte protective order. The abuser must be served in person with the protective order application and ex parte protective order. If the abuser appears in court and does not agree to the protective order, a hearing will be required where you and any witnesses for both parties will testify. The Judge will make the decision whether to issue a final protective order.

The same “clear and present danger” requirement is necessary for ex parte applications in protective orders filed under [Tex. Code Crim. Proc. § 7B.002](#). An applicant can apply for a protective order as its own case, or as part of a divorce or a suit affecting the parent-child relationship. [Tex. Fam. Code § 82.005](#). 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. Additionally, recent changes to the Texas Family Code allow protective order recipients to separate their wireless telephone number, or their child’s wireless telephone number, from the Respondent’s account. No penalties may be imposed for early contract termination, and the applicant should not be held responsible for any outstanding balance on the account. Although some fees may apply, no fees should be charged for the transfer of the phone numbers. These changes only apply to a petition for protective order which is filed on or after September 1, 2021. [Tex. Fam. Code § 85.0225](#), [Tex. Bus. & Com. § 608.001](#).

#### ***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 six 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 six months before the proceeding and the child is absent but the parent still lives in Texas), (2) the home state of the child does not have jurisdiction or has declined to exercise jurisdiction (and the child and the child’s parent have a significant connection with the state of Texas and substantial 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\(a\)](#).

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 § 153.005](#). 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. [Tex. Fam. Code § 153.131\(b\)](#). 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. [Tex. Fam. Code § 153.135](#).

In most custody orders, one parent will have the right to decide where the child lives. [Tex. Fam. Code § 153.134\(b\)\(1\)](#). 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. [Tex. Fam. Code § 153.131](#). A 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 a 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. However, there is heightened standard to modify the right to decide where the child lives within a year of the last court order being rendered. [Tex. Fam. Code § 156.102](#).

### C. *Useful Websites*

- For general information on many family law issues and sample forms, visit [Texas Law Help](#).
- For general information on services for crime victims, visit the Office of the [Attorney General](#).
- For general information on getting child support orders in cases involving family violence, visit [here](#). For general information on modification of child support orders, visit [Modify Child Support](#).
- To apply for legal aid, contact:
  - ***Legal Aid for Survivors of Sexual Assault***  
1-800-991-5153
  - [Legal Aid of NorthWest Texas, Inc.](#)  
1-888-529-5277
  - [Lone Star Legal Aid, Inc.](#)  
1-866-659-0666
  - [Texas Advocacy Project](#)  
1-800-374-HOPE (4673)
  - [Texas RioGrande Legal Aid, Inc.](#)



- 1-833-329-TRLA (8752)
- [Texas Legal Services Center](#)  
1-800-622-2520
- Helpful websites and phone numbers:
  - [National Domestic Violence Hotline](#)  
1-800-799-7233 (24/7/365 hotline)
  - [Texas Department of Family and Protective Services](#)
  - [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. § 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. § 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 of the parties reside, or where an alleged violation occurred. The court has the authority to hold the protective order violator in contempt. [Tex. Fam. Code § 81.010](#).

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 (meaning out-of-state) 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. [Tex. Fam. Code § 88.003](#). 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. [Tex. Fam. Code § 88.004\(e\)](#).

It is important to note that if you have any orders for custody of a child and you are planning to move with that child out of state, or you do move due to an emergency, consult with an attorney as soon as possible to review your orders.

***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\(c\)](#), 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 the [Office of the Attorney General](#). Also, see the information in the "Protective Order" overview above, which discusses when a protective order recipient may separate their wireless telephone number, or their child's wireless telephone number, from the Respondent's account.

**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. Sexual assault is not your fault. 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. § 17.292](#). An MOEP will be granted if the offense involved serious bodily injury or the display or use of a deadly weapon. [Tex. Code Crim. Proc. § 17.292\(b\)](#). The duration of these orders may be anywhere in the range of 31 to 91 days, depending on the circumstances. [Tex. Code Crim. Proc. § 17.292\(j\)](#). You do not have to be present for the order to be issued. [Tex. Code Crim. Proc. § 17.292\(d\)](#). 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. [Tex. Code Crim. Proc. § 17.292\(g\)](#).

Even if you have not called the police, you can file for a sexual assault protective order (SAPO). [Tex. Code Crim. Proc. § 7B.001\(a\)](#). You do not have to pay court costs to request a protective order. For help with applying for an SAPO, contact the county or district 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. § 7B.001\(b\)](#) *et seq.* Texas law says a SAPO may be granted for a victim of several offenses, including indecent assault. [Tex. Code Crim. Proc. § 7B.001\(a\)\(1\)](#).

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." [Tex. Code Crim. Proc. § 7B.002](#). 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. [Tex. Code Crim. Proc. § 7B.003](#). Find a pro se SAPO packet [here](#).

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:

[Sexual Assault Survivors: Know Your Legal Rights!](#)

### 13.5 **FAQs—Conservatorship**

***Q. 13-5 I am the child's grandparent or other relative, 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.

Under Texas Family Code § 32.001, a grandparent, adult brother or sister, or adult aunt or uncle may consent to health-care treatment (other than immunization) of a minor when the parent or conservator having the right to consent to treatment cannot be contacted, and that individual has not given express notice to the contrary. You may also visit [texaslawhelp.org/article/consent-to-medical-treatment-by-a-non-parent](http://texaslawhelp.org/article/consent-to-medical-treatment-by-a-non-parent) for more information.

Federal law also provides protection for students who are homeless or displaced as the result of natural disasters. A federal law called the McKinney-Vento Act defines 'homelessness' as it applies to public school students. Under this law, the definition of 'homelessness' includes children and youth who do not have a regular and adequate nighttime residence and specifically applies to children and youth residing in shelters, transitional housing, cars, campgrounds, motels, and staying with friends or family temporarily because of economic hardship, loss of housing, and natural disasters. [42 U.S.C. § 11434A\(2\)\(A\)-\(B\)](http://42.U.S.C.11434A(2)(A)-(B)). Even families and youth who are living with others on a temporary basis and are unable to return to their homes because of a disaster would be considered homeless under the Act. Children and youth who are homeless as defined above are entitled to be enrolled immediately in the school district where they are currently living. It doesn't matter if it is different from their original school or if you don't have documentation, like proof of residency, birth certificates, immunization, and health records, etc. Every school district in Texas is required to have a liaison who is responsible for coordinating efforts to assist homeless or displaced students. This link contains a directory of each District's liaison: [tea.texas.gov/texas-schools/support-for-at-risk-schools-and-students/texas-education-for-homeless-children-and-youth-tehcy-program#mv%20liaisons](http://tea.texas.gov/texas-schools/support-for-at-risk-schools-and-students/texas-education-for-homeless-children-and-youth-tehcy-program#mv%20liaisons).

If you have one parent's cooperation, under [Tex. Fam. Code § 34.002](http://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](http://Tex.Fam.Code.34.003).

However, under [Tex. Fam. Code § 34.008](http://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. Find the form, along with instructions for completing it [here](#).

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](#); [35.005](#), 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. This authority does not modify any existing custody orders and/or court-ordered right and duties of the child's conservators. The order lasts for one year. [Tex. Fam. Code § 35.005\(d\)](#). It can be renewed for a period of not more than one year based on a showing of continued need for the order. [Tex. Fam. Code § 35.006](#).

Helpful information for grandparents (or other relative) may be found in the [Texas KinCare Primer](#).

**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 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. [Tex. Fam. Code § 152.202](#). 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](#). The transfer to another county is discretionary if the child has lived in the new county for less than six months when the case is filed. [Tex. Fam. Code § 155.202](#).

**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 the 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, request a hearing, and 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 1-800-252-8014 for more information and assistance.

***Q. 13-8 During the disaster my child's other parent evacuated with my child and will not give them back. What do I do?***

You may consider reporting the violation to the police to document that you did not voluntarily allow the other parent to keep your child. 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 their 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.

***Q. 13-9 I have a pending child support/custody/divorce proceeding. What do I need to do to stay notified of any future hearings?***

If your residence or mailing address changes, you will want to update the court's file with a mailing address where you can receive mail to make sure that you are sent notice of any hearings that are scheduled in your ongoing case. If you have a court order that says your address and other information should be kept confidential, consider using a P.O. box or other safe address that does not disclose your physical location. If you provide an email address, be sure that it is an email address that you can access and check regularly. A sample "[Notice of Current Address](#)" form can be found at [www.TexasLawHelp.org](http://www.TexasLawHelp.org). If you plan to move with your children, make sure to consult with an attorney first to ensure you do not violate any current standing orders by moving.

***Q.13-10 Our court order requires exchanges at a location I cannot get to due to the evacuation. What should I do?***

If you are unable to deliver the child to the court-ordered exchange location, you should reach out to the other party to notify them. If it is safe to do so, you can try to reach an agreement regarding an alternative

location to exchange the children. If you cannot reach agreements, it is a good idea to keep a log of what happened that day and why you couldn't make it. It is also advisable to keep a copy of any texts, emails or voicemails regarding the conversation in case an enforcement suit is filed in the future. This will help you explain the disaster-related circumstances that prevented you from complying with the order to the judge.

### **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." [Tex. 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 [Tex. 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 [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 existing trial court order controls for purposes of determining a parent's right to possession of and access to their child. 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.

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 1-800-252-5400 (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, they 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 [Coronavirus and Child Visitation](#) for general information regarding the effect of COVID-19 on possession orders.

## **B. Court Procedure Rules**

The Texas Supreme Court issued a series of emergency orders to adjust court procedure rules in light of the COVID-19 pandemic. The final emergency order expired on March 1, 2023. However, the Texas Supreme Court issued revised Texas Rule of Civil Procedure 21 and 21d to authorize courts to allow or require participants to appear at court proceedings electronically. Unless a hearing notice states otherwise, the hearing will be held in person in the courtroom. Hearing notices should include the location of the proceeding or instructions for joining the proceeding electronically. A party can object to the method of appearance upon a showing of good cause within a reasonable time after receiving the hearing notice.

Contact your local county or the applicable court in your jurisdiction to determine the latest information. See [here](#) 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 the [Office of the Attorney General](#) 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.

See [Find Child Support Locations](#) for physical child support offices. Additionally, 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](#).

## **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 Useful Websites

#### A. **General Information**

[Children's Commission](#)

[DFPS Policy Handbooks](#)

[DFPS Office of Consumer Affairs](#)

#### B. **For Parents/Caregivers**

[Parent Resource Guide \(English\)](#)

[Parent Resource Guide \(Spanish\) \(Manual de Recursos para Padres y Madres de Familia\)](#)

[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 \(call, text, or chat\)](#)

[DFPS Regional Preparation for Adult Living \(PAL\) Coordinators](#)

[DFPS Regional Transition Centers](#)

[DFPS Understanding the Roles of the People Involved in a CPS Case \(videos\)](#)

[DFPS Reentry Liaisons for Extended Foster Care](#)

DFPS [Housing Programs](#) and [Regional Housing Liaisons](#)

[Texas Homeless Youth Handbook](#)

### 13.12 FAQs

#### **Q. 13-11**

#### ***Can reports of abuse or neglect be made during a disaster?***

Yes, even in a disaster the Statewide Intake (SWI) division 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 **1-800-252-5400** 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](#).

As of September 1, 2023, DFPS will no longer be permitted to receive anonymous reports of abuse or neglect. The reporter will be required to provide their name, address and phone number, facts leading the reporter to believe abuse or neglect has occurred, and the source of the information. Individuals not willing to share the required information will be referred to state or local law enforcement agencies. [Tex. Fam. Code § 261.104](#).

\*\*\*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. 13-12      *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) / Manual de Recursos para Padres y Madres de Familia (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) to challenge a reason to believe finding. 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 § 707.505\(a\)](#). 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 § 707.505\(b\)](#). You may hire an attorney to represent you at the ARIF, but you do not have to. [40 Tex. Admin. Code § 707.505\(g\)](#). 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 § 707.505\(k\)](#).

**Q. 13-13      *What do I do if I cannot comply with my CPS service plan?***

If you are not able to comply with your CPS service 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.

As of September 1, 2023, a parent who is required to complete a service plan may obtain services from a qualified or licensed provider selected by the parent, and CPS will be required to reimburse service providers who are not under contract with CPS. [Tex. Fam. Code § 263.1021](#).

**Q. 13-14      *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 § 7642](#). Other functions of CPS, such as investigation and casework of active removal cases, will continue.

**Q. 13-15      *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. 13-16      *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. 13-17      *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. 13-18      *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. 13-19      *How can I make a complaint against CPS?***

Complaints about CPS can be made through the [Office of Consumer Affairs \(OCA\)](#). You can contact the OCA in a number of ways:

- Phone: 1-800-720-7777, Monday—Friday, 8:00 A.M.—4:30 P.M.
- Complete an online complaint form

- Print a form and return by email, fax, or regular mail
- Email: [oca@dfps.texas.gov](mailto:oca@dfps.texas.gov)
- Fax: 1-512-339-5892
- Regular mail: OCA/DFPS, PO Box 149030, Mail Code Y946, Austin, TX 78714-9030

Note that the OCA 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. If you have a complaint about your attorney, you can tell the court or consider filing a [grievance](#) with the State Bar of Texas.

**Q. 13-20      *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.

If a child or youth in foster care is no longer in TMC and is currently in permanent managing conservatorship (PMC), they may only have a GAL; courts have the option to continue the appointments of either the GAL or AAL or both. [Tex. Fam. Code § 107.016\(1\)](#). If the child or youth 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 and consents to 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 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. 13-21      *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.<sup>1</sup> The code defines “homeless children and youths” as children who do not have a fixed, regular, and adequate nighttime residence.<sup>2</sup> 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.<sup>3</sup>

### **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, the Texas Education Code allows a homeless student to enroll in any school district in Texas, regardless of where they are living temporarily.<sup>4</sup> 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.<sup>5</sup> 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, as well as 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 to Which Homeless/Displaced Students Are Entitled**

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

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<sup>1</sup> See generally [42 U.S.C. Ch. 119](#).

<sup>2</sup> [42 U.S.C. § 11434a\(2\)\(A\)](#).

<sup>3</sup> [42 U.S.C. § 11434a\(2\)\(B\)\(i\)](#).

<sup>4</sup> [Tex. Educ. Code § 25.001\(b\)\(5\)](#).

<sup>5</sup> [42 U.S.C. § 11432\(g\)\(3\)\(C\)\(i\)](#).

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. 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.<sup>6</sup>

The receiving school must provide services comparable to those the student received in the old district until it either: 1) adopts the Individual Education Plan (IEP) developed by the old district; or 2) develops, adopts, and implements a new IEP.<sup>7</sup> Within 30 days, the receiving school must then gather additional information, develop or propose new IEPs, and determine the need for further assessment.<sup>8</sup> The receiving school may not dismiss programs and services from the prior IEP without developing a new IEP in accordance with state and federal procedural requirements.<sup>9</sup> IEP supports include related services such as special education transportation, counseling, occupational therapy, physical therapy, assistive technology, speech therapy, behavior supports, and specialized instruction.<sup>10</sup>

If a disaster destroys a student's records that documented 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

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<sup>6</sup> [20 U.S.C. § 1414\(d\)\(2\)\(C\)\(i\)](#).

<sup>7</sup> [34 C.F.R. § 300.323\(e\)](#).

<sup>8</sup> Education Service Center Region 4, *Student Transfers Flowchart*, [esc4.net/Assets/transfer-students-flowchart\(1\).pdf](#); 19 TAC § 89.1050(j)(2).

<sup>9</sup> [34 C.F.R. § 300.323\(e\)\(2\)](#); [20 U.S.C. § 1414\(d\)\(2\)\(C\)\(i\)\(I\)](#).

<sup>10</sup> [34 C.F.R. § 300.34\(a\)](#); [20 U.S.C. § 1401\(26\)](#).



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 Data (REED). If the school district cannot establish the student's eligibility, it must conduct a new assessment with parental consent.<sup>11</sup>

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 needs.

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."<sup>12</sup> Texas law also provides specific timelines for schools 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.<sup>13</sup>

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.<sup>14</sup>

For a student who is not eligible to receive special education services under the 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 the IDEA. The COVID-19 pandemic may result in an increase in students experiencing a disability covered by the IDEA (including students experiencing a health impairment or a serious emotional disturbance as a result of the pandemic).

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

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<sup>11</sup> [34 CFR § 300.305](#).

<sup>12</sup> [20 U.S.C. § 1412\(a\)\(3\)\(A\)](#).

<sup>13</sup> [19 Tex. Admin. Code §89.1011\(b\)](#).

<sup>14</sup> [34 CFR §300.8](#).



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. 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.<sup>15</sup> As a general rule, before a student can be served in a homebound setting, the ARD committee must review documentation from a physician stating that the student is expected to be confined to the home for a minimum of four consecutive weeks.<sup>16</sup> Alternatively, some districts may allow homebound placements for chronically ill students who are expected to be confined to the home for a minimum of four weeks throughout the school year. With the majority of state funding for virtual learning ending, more disputes may arise over whether homebound services are required for students who no longer have the option to participate through online learning but believe they are at higher risk of contracting COVID during in person instruction.

In addition to each school district's homeless liaison and the THEO hotline referenced above under 14.5, THEO maintains a [list of resources for homeless/displaced students](#).

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.<sup>17</sup>

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<sup>15</sup> U.S. Department of Education, *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (March 2020), <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>.

<sup>16</sup> [19 Tex. Admin. Code § 89.1005\(c\)\(2\)\(A\)](#).

<sup>17</sup> Texas Education Agency, *Coronavirus (COVID-19) Support and Guidance*, <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

#### **A. *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?

#### **B. *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 have a mobile device (e.g., my mobile phone) with the SmartLINK app with GPS function. I must turn on the device all the time to comply with ICE supervision. I cannot keep the device 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 they are safe?

#### **C. *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

#### A. *General*

Programs for immigrant disaster victims have different requirements and definitions regarding who may apply. Under 44 C.F.R. § 80.3(g) and 8 U.S. Code § 1641, 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<sup>1</sup>;
- 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;
- Noncitizens 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;
- Noncitizens whose children have been battered or subject to extreme cruelty and noncitizen 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.

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<sup>1</sup> Withholding of removal can be based on any of the 5 protected grounds: race, religion, national origin, political opinion or particular social groups, not just political opinion. This is equally applicable to asylees and refugees.

## **B. 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 primarily dependent on the government for support, by receiving cash assistance for income maintenance, or by being institutionalized for long-term care at government expense. The “public charge” rule finalized in February 2020 that might have made noncitizens ineligible for permanent residency because of receipt of certain public benefits has been repealed in its entirety. The Biden Administration issued the final rule on “public charge” on September 8, 2022, that significantly narrows the list of federal means-tested benefits that would trigger public charge considerations. The new rule took effect on December 23, 2022. One-time or limited-duration disaster cash assistance relief generally does not trigger “public charge” determination. Cash assistance received by family member(s) of a noncitizen is not attributable to the noncitizen to trigger “public charge” determination.

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), 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, health, and sponsor’s affidavit of support. No single factor will determine whether an individual is a public charge. The immigration officials will consider whether an individual has been primarily dependent on certain benefits in the past and whether the individual is likely to become a public charge in the future.

The “public charge” test is not applicable to several categories of immigrants, e.g., asylees, refugees, U or T visa applicants or holders, VAWA self-petitioner, children seeking or granted Special Immigrant Juvenile Status (SIJS). There is also no “public charge” test for individuals applying for U.S. Citizenship, renewal of “green card,” Deferred Action for Childhood Arrivals (DACA), asylum, Temporary Protected Status (TPS), or Deferred Enforced Departure (DED). For up-to-date information on the status of public charge regulations, check [here](#). You can also use this [on-line tool](#) to see if public charge applies to you.

## **C. 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 manual. 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 because the Alabama law discriminating against immigrants was amended a year after *Magee*. 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.”).

#### **D. *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 [Unemployment Benefit Services](#). For more information, see Chapter 6 of this manual.

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 [here](#).

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 [here](#). The Department of Homeland Security also developed issued [policy statement 065-06](#), and on January 13, 2023, offered [deferred action](#) to protect noncitizen workers from threats of immigration-related retaliation from the exploitative employers. that U.S.C.I.S began implementation of the worker-related deferred action process on June 1, 2023.

#### **15.4 Useful Websites and Contact Information**

- [FEMA Emergency Assistance](#), Helpline—1-800-621-3362
- [State Bar of Texas Lawyer Referral & Information Service](#)—1-800-252-9690
- [Texas RioGrande Disaster Legal Aid](#)—1-956-996-8752 or 1-833-329-8752
- [Lone Star Legal Aid](#)—1-800-733-8394
- [Legal Aid of NorthWest Texas, Inc.](#) —1-888-529-5277
- [Houston Volunteer Lawyers](#)—1-713-228-0735
- [American Immigration Lawyers Association](#)—1-202-507-7600
- [Houston Immigration Legal Services Collaborative](#)—Greater Houston only
- [Houston Immigrant Resource Hotline](#) (Greater Houston only)—1-833-468-4664
- [State Bar of Texas Disaster Relief Services](#)—1-800-504-7030

## 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](http://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 number: 1-800-462-7585) or for 7-1-1 or Video Relay Service call 1-800-621-3362. For more information, see Chapter 2 of this manual.

### **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;
- Noncitizens 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
- Noncitizens whose children have been battered or subjected to extreme cruelty and noncitizen 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.” This form expires on March 31, 2024. This form can be uploaded [here](#). 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](#) (last updated November 15, 2019).

## 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

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 [here](#). You can also text “DRC” and a zip code to 43362 to find your nearest DRC or call 1-800-621-3362 (TTY number: 1-800-462-7585). Standard message and data rates apply. For individuals who use 7-1-1 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. You can apply for [FEMA Assistance online](#).

## 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 means. 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](#), or via the [smartphone app](#). FEMA cash assistance and other FEMA assistance do not trigger a public charge issue. Refer to the “Public Charge” section above and [Q. 15-2](#) below 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 manual.

## Unemployment Assistance

Individuals who are “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. Thirty-day application timeline 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 [Disaster Unemployment Assistance](#).

***Q. 15-2 Will accepting FEMA benefits affect my immigration status or my application to become a lawful 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 benefit 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 [USCIS Public Charge Resources](#).

The Trump Administration finalized the “public charge” rule in February 2020 that threatened to prevent a noncitizen from being eligible for lawful permanent residency if that individual received certain public assistance for a set duration. The Biden Administration, on March 9, 2021, has since removed Trump’s Final Rule on Public Charge. The Biden Administration issued the final rule on “public charge” on September 8, 2022, which has become effective on December 23, 2022. The new rule essentially incorporated the former standard on “public charge” that has been in existence since 1999 and provides clearer guidance to immigration and consular officials who are charged with making public charge determination when someone applies for immigration status. Homeland Security, [DHS Publishes Fair and Humane Public Charge Rule](#). For up to date information on the status of public charge regulations, see [Know Your Rights](#) and [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 [American Red Cross Statement on Impartiality](#). 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.

The way Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) enforce immigration laws during 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 act 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. On October 27, 2021, Secretary Mayorkas of the Department of Homeland Security issued a guidance designating a place where disaster or emergency response and relief is being provided as a "protected area" where immigration enforcement should not take place. See [Guidelines for Enforcement Actions in or Near Protected Areas](#).

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 [Red Cross](#). You can also contact 2-1-1 for an additional referral. If you feel that you have been wrongly denied access to an emergency shelter due to your immigration status, you can fill out a complaint form with [ACLU](#).

***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 either face a removal process or trigger a hold on your immigration status. 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. An officer is also not allowed to arrest you or hold you based on your immigration status. If you are under arrest, you are only required to give your name, residence address, and date of birth. ACLU, [Know Your Rights Under SB4](#) (last updated March 13, 2018).

***Q. 15-5 If I have a loved one in an immigration detention center, how can I find out if they are 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) 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](#).

***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, 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 has an automated hotline that provides information about cases that have been initiated in Immigration Courts. It offers proceeding information, including hearing dates, immigration judge decisions, etc. You can access the information by calling the automated hotline at 1-800-898-7180. You will need to provide your “A-number” to get information about your case. In addition, you can also check the status of your case through this [on-line portal of EOIR](#).

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 [here](#). 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 their [website](#). If the court does enter an order of removal, you should try to 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 number: 1-800-767-1833) or by visiting their [website](#).

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 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 number: 1-800-767-1833) and

let them know you will miss your appointment due to a natural disaster. For more information, visit their [website](#).

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 number: 1-800-767-1833).

### **Immigration and Customs Enforcement (ICE)**

If you missed a scheduled appointment or check-in with ICE, call your [ICE field office](#) 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
- [Arrival/Departure Record I-94](#). Form I-102 (you can also look up your most recent I-94 on this [CBP site](#))
- [Employment Authorization](#). Form I-765
- [Naturalization/Citizenship Certificate](#). Form N-565
- [Fee Waiver](#). Form 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 the [USCIS website](#).

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 through the online [FOIA request service](#). As of December 16, 2022, you can no longer make FOIA request by email or fax. For more information on what to include with your FOIA request, call the USCIS Contact Center at 1-800-375-5283 (TTY number: 1-800-767-1833) or visit [Request Records through the Freedom of Information Act](#). Check the status of a pending FOIA request [here](#).

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, or Texas driver’s license or identity card, visit the Texas Law Help website for detailed instructions on how to request a new document:

- [English](#)
- [Spanish](#)

### 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](#)
- [Spanish](#)

### 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) or call the AILA at 1-202-507-7600. If you are in Houston, call the Houston Immigrant Resource Hotline at 1-833-468-4664 to connect 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 to a year to process. For details on how to submit a FOIA request to the immigration court, please visit their [website](#).

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 [here](#).

#### ***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](#) (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 service providers may be able to assist you with your appeal.

- [Texas RioGrande Disaster Legal Aid](#)—1-833-329-8752
- [Lone Star Legal Aid](#)—1-800-733-8394
- [Legal Aid of NorthWest Texas](#)—1-888-529-5277
- [Houston Volunteer Lawyers](#)—1-713-228-0735

**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 [change of address form](#). You can also update your address by calling the USCIS Contact Center at 1-888-375-5283 (TTY number: 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 this [website](#), 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 [here](#) and can also use the on-line “[Respondent Access](#)” portal to submit a change of address.

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 to BIA to the address on the form. You also need to “serve” the government attorney, i.e., the Office of Chief Counsel for Department of Homeland Security, Immigration and Customs Enforcement (ICE) in the jurisdiction of the Immigration Court from which you file your appeal with the BIA by giving a copy of the BIA change of address form in person or mail it to the appropriate address. To locate the address of ICE field offices, visit this [website](#). You can submit change of address using the on-line portal, called “[Respondent Access](#)”. No online change of address is available for the BIA. You can get Form EOIR 33/BIA from the Department of Justice website [here](#).

### **Immigration and Customs Enforcement (ICE)**

To change your address with Immigration and Customs Enforcement (ICE), you can call 1-866-347-2423 (TTY number: 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 for 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) recommends you for employment, you may be eligible to file Form I-765, Application for Employment Authorization. For more information, see [Special Situations](#).

***Q. 15-12 I have an ankle monitor or a device with SmartLINK and cannot leave my address. I cannot keep my ankle monitor or my SmartLINK device 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 your attorney 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 it is safe to do so, go to one of the offices listed [here](#).

***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 [Texas Law Help](#).

Some worker centers across the state are:

- [Equal Justice Center](#) with offices in Austin, Dallas, San Antonio, and Houston. For employment matters, they can be reached at 1-800-853-4028.
- [Workers Defense Project](#) has offices in Austin, Dallas, and Houston.
- [Fe y Justicia Worker Center](#) is based in Houston.
- **Fuerza Del Valle** operates in the Rio Grande Valley: you can call 1-956-283-5650 or email [fightwagetheft@gmail.com](mailto:fightwagetheft@gmail.com). 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, visit this [website](#).

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. However, if police ask you about your status or country of origin, you do not have to answer.

\*\*\*FEMA has a collection of flyers containing important FEMA Assistance information for undocumented immigrants that are written in multiple languages [here](#).

## 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. Disasters can also spur nonprofits to take on disaster-relief activities which may be outside of their normal programs or activities.

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 survivors 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: 1-800-621-3362. *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.*

- a. 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.

Find general information [here](#).

- b. 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 providers<sup>1</sup> 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 leased the building, it could qualify for grants if it is legally responsible for disaster-related repairs. Here, the (pre-disaster)

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<sup>1</sup> 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.)



lease must clearly state that the nonprofit is responsible for repairing major damage, rather than just maintenance or minor repairs.

Find general information [here](#).

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.

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: 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 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).

To apply for Disaster Assistance Grants, visit this [website](#).

2. Department of Agriculture: Farmers and ranchers with disaster-related losses may be eligible for assistance from the [U.S. Department of Agriculture](#). 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.

Find more information [here](#).

Find applications [here](#).

Find your local SBA office [here](#).

- a. 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 most private nonprofits, small businesses, and small agricultural cooperatives if the SBA determines they are unable to obtain credit elsewhere and 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.

- b. 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 which have suffered physical losses in a disaster, such as real property repairs. Find more information [here](#). In limited circumstances the SBA may declare a disaster declaration (Agency Declaration) when a disaster does not rise to the level of a federal disaster declaration.
- c. SBA Loan Abatement: Existing SBA disaster loans approved prior to 2020 in regular servicing status as of March 1, 2020, received an automatic deferment of principal and interest payments through December 31, 2020. This initial deferment period was subsequently extended through March 31, 2021. An additional 12-month deferment of principal and interest payments will be automatically granted to these borrowers. Borrowers resumed their regular payment schedule with the payment immediately preceding March 31, 2022, unless the borrower voluntarily continues to make payments while on deferment. It is important to note that the interest will continue to accrue on the outstanding balance of the loan throughout the duration of the deferment. More information can be found [here](#).
- d. Mitigation Assistance Loan Increase: An SBA loan that allows you to increase your SBA disaster assistance loan by up to 20% of your verified physical damage to make mitigation improvements. Borrowers generally have two years after their loan approval to request an increase for higher rebuilding costs, code-required upgrades, or mitigation. More information can be found [here](#).

## **B. *What About My Business or Organization's Commercial Lease?***

### **1. Physical Damage**

Notify the landlord as soon as possible *in writing* of damage to the premises, and if operations were shut down because 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, and how the responsibility for repairs is apportioned between the parties to the lease. 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.

### **2. 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 for the business or nonprofit to review its contracts in the event of a dispute over contractual obligations or to 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, and penalty 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 ([IRS FAQs](#)). 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 [here](#).

### **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. Find more information, [here](#).

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, utility statements, or business licenses. More information can be found [here](#).

Disaster Unemployment benefits count as taxable income.

### **16.3    501(c)(3) Nonprofits Engaged in Disaster Relief**

Nonprofit organizations often provide assistance to disaster survivors 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 [IRS Publication 3833](#).

#### **A.        *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.

#### **B.        *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).

#### **C.        *Restricted Donations***

Nonprofit organizations can accept donations earmarked for specific purposes, such as to provide food aid to the survivors 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 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.

#### **D.     *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 survivors of a disaster.

Distribution of assistance must be based on an objective evaluation of the survivor’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.

#### **E.     *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. See [Exempt Organizations: Independent Contractors vs. Employees](#).

Volunteers often assist nonprofits in providing disaster assistance to the survivors of the disaster. Nonprofits may be tempted to reward or compensate those who work tirelessly to serve survivors 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 thoroughly to avoid any unintended employment law consequences. See [Providing Disaster Relief through Charitable Organizations: Working with Volunteers](#).

#### **F.     *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     Refer to the 2020 and 2021 Disaster Manual for information about COVID-19 relief.**

## 17.0 ESTATE PLANNING & WILLS

### 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, Wills, and Transfer on Death Deeds. Each of these and others are discussed below.

A key to estate planning is getting the documents in place before the need arises to make these difficult times less difficult. Probate is cumbersome and, for many, requires an attorney. Planning ahead to avoid the need for probate, where possible, can help reduce cost, time, and the burden on yourself and loved ones.

#### 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. Once a person is incapacitated, they can no longer sign a durable power of attorney and a more arduous guardianship proceeding may be necessary. Planning ahead and preparing a durable power of attorney should alleviate burdens later. [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***

##### 1. Length of Duration

- a. [Texas Estates Code § 751.0021](#) describes the requirements of a durable power of attorney. One of the requirements is for the principal to select when the powers begin. 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 later 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 tedious during an already difficult time. Once a power of attorney has become effective it will remain effective for the life of the principal unless the principal revokes it, the power of attorney contains a termination date, the agent resigns or becomes unable to perform and there is no alternative agent designated, or a court appoints a guardian of the estate. [Tex. Est. Code § 751.131](#).

- i. *What does it mean to be disabled or incapacitated?*
  - ii. 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 § 751.00201](#).
2. Other General Requirements
  - a. In addition to the designation regarding effectiveness upon disability or incapacity, a durable power of attorney must be:
    - i. in writing,
    - ii. signed by the principal or by another in the principal’s conscious presence at the principal’s direction, and
    - iii. acknowledged before a notary by the principal or other person signing on behalf of the principal. [Tex. Est. Code § 751.0021](#).
  - b. 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 health care decisions on behalf of that individual if the individual cannot communicate with their 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. A medical power of attorney is valid until the individual revokes it, becomes competent again, a court appoints a guardian of the person, or they pass away. [Tex. Health & Safety Code § 166.152\(g\), § 166.155-156](#).

**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. [Tex. Civ. Prac. & Rem. Code § 137](#).

### **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. Tex. Health & Safety Code §§ 166.031-.053.

### **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. [Tex. Health & Safety Code §§ 166.081-.102](#).

## **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. Testamentary capacity refers to the mental ability to understand and make necessary decisions regarding a will at the time of execution. Testamentary capacity requires that at the time of the execution of the will the decedent must have had sufficient mental ability to:

1. understand the business in which the decedent was engaged (the making of a will);
2. understand the effect of their act in making the will;
3. understand the general nature and extent of their property;
4. know their next of kin and natural objects of their bounty; and
5. collect in their mind the elements of the business to be transacted, and hold them long enough to perceive at least their obvious relation to each other, and to be able to form a reasonable judgment as to them.
  - a. 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.
  - b. [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.

- c. The witnesses must be above the age of 14, be credible, not be interested parties, and must sign in the presence of the testator.
- d. A will can be valid without a notary. However, a will cannot be self-proving 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. Two witnesses must testify in court, during probate proceedings, to the Testator’s handwriting. The holographic will can be self-proved by Testator making an affidavit before a notary. Holographic wills result in many different challenges and the rules must be followed exactly before the will is approved for probate.
- f. Some important provisions to keep in mind in drafting a will are:
  - i. *Family*—States who is in the testator’s family and specifically states if they intend to include or leave out someone
  - ii. *Bequests*—States who will receive what property. Make specific, general, and residual bequests
  - iii. *Appointment of Executor and their Powers*—States who will be in charge of administering the estate and should include the testator’s designation on whether an independent administration is authorized
  - iv. *Revocation of prior wills*—If the testator has other/older Wills, state whether they want to revoke them or have this document treated as a Codicil to avoid conflicts
  - v. *Designation of Trustee and/or Guardian*—States who will be the Trustee for any minor children or trusts that are created by the Will
  - vi. *No Contest Clause*—States that if a person contests the validity of the will, they will forfeit the share that they were bequeathed in the Will
  - vii. *Requiring or Waiving Bond*—States whether the testator wants the Executor to pay a Bond to the Probate Court

## 17.6 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 property owner to keep title to real property during their life and transfer title to their beneficiary upon their death without the need of going to court. Multiple beneficiaries can be named and the TODD may be changed or canceled at any time during the property owner’s life. 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. Although there is no longer a statutory form, Texaslawhelp.org offers a Transfer on Death Deed form which can be located [here](#).

## 17.7 Life Insurance

- 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.
- When you buy a life insurance policy, you will designate a beneficiary who is to receive the death benefit on your death.
- 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.
- 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.

## 17.8 COVID-19 Remote Notary Issue—IMPORTANT UPDATES

Generally, the electronic execution of documents through the use of digital signatures is authorized by the Texas Uniform Electronic Transactions Act (TUETA), found in [Chapter 322](#) of the Business and Commerce Code. Unfortunately, this statute does not provide authority to execute estate documents using electronic or digital signatures. Wills are expressly excluded from TUETA. [Tex. Bus. & Com. Code Ann. § 322.003\(b\)\(1\)](#). Additionally, TUETA applies only to “transactions between parties” who have “agreed to conduct transactions by electronic means.” [Tex. Bus. & Com. Code Ann. § 322.005](#). Estate documents generally do not fit the definition of a “transaction” under the statute. [Tex. Bus. & Com. Code Ann. § 322.002](#). Despite this, authorization to electronically sign medical directives is specifically authorized by [Section 166.011](#) of the Texas Health & Safety Code.

Separate from the question of whether an electronic or digital signature is authorized to execute a document is a question of whether the document can be remotely notarized. The Texas Government Code Subchapter C of Section 406 provides authority for when a document can be notarized online. Currently, online notaries can only notarize electronic signatures. If there is no authority for the document to be electronically executed, then it also cannot be notarized online. Documents that require “wet” signatures require the physical presence of a notary during execution. **Update: SB 1780 removed the limiting language restricting online notarization to electronic signatures. SB 1780 becomes effective January 1, 2024. Once it becomes effective, an online notary can notarize “wet” ink signatures online.**

Remote notarization by traditional notaries was temporarily authorized by the Texas Governor in response to the COVID-19 Disaster Declaration. On April 8, 2020, Governor Abbott issued a temporary order suspending the physical presence requirements for notarization and permitting the following documents to be notarized by traditional notaries over two-way video:

- Self-proving affidavits for Wills
- Financial Powers of Attorney
- Medical Powers of Attorney
- Advanced Directives
- Oath of Executors
- Oath of Guardians

The press release can be found [here](#). Update: This temporary order was quietly terminated effective at 12:01 a.m. September 1, 2021. See the Texas Secretary of State's "[Frequently Asked Questions for Notaries Public](#)" fact number 31. Experts on the topic did not learn of the termination until July 21, 2022. Documents that were executed in compliance with the temporary order between April 8, 2020 through 12:00 A.M. on September 1, 2021 while the suspension was in effect, remain valid. Any documents that were executed at or after 12:01 A.M., September 1, 2021, in reliance on this order should be reviewed to determine if they should re-executed.

## PROBATE

### 17.9 Non-Probate Assets

There are four general categories of non-probate assets:

- Property passing by contract (life insurance proceeds, employment benefits, etc.), provided a beneficiary has been designated
- Property passing by right of survivorship (joint accounts and property owned with right of survivorship)
- Property held in trust
- Pay or transfer on death agreements (bonds, mortgages, promissory notes, securities accounts, contracts, deeds, etc.)

### 17.10 Estate Administration

A. There are two types of administration: independent and dependent. See [Tex. Est. Code §§ 401.001-401.003](#).

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 and list of claims. [Tex. Est. Code § 402.002](#), and §§ [309.051-.052](#).

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:

1. all the decedent's heirs have been determined through a proceeding to determine heirship and
2. all 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.

### 17.11 Alternatives to Probate

#### A. *Muniment of Title*

1. Muniment of Title is a proceeding that can be used if there is a will and 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.

2. 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](#).

3. 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. Once the order is signed, a certified copy of the Order Admitting the Will to Probate as Muniment of Title and a certified copy of the Will should be filed into the county clerk’s property records where any real property is located.

#### **B. *Small Estate Affidavit***

1. The Small Estate Affidavit can be used if there is no will. It 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.

2. 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](#).

##### **a. General Requirements**

##### **i. 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\(a\)\(1\)-\(3\)](#).

##### **ii. 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 § 205.002\(b\)](#).

##### **iii. 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.**

- iv. 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.

#### **17.12 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 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\(b\)](#). 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 real property to be distributed or other necessity for administration. 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](#).

#### **17.13 Medicaid Estate Recovery Program (MERP)**

Medicaid is a governmental program that pays for health care 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.

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](#). Before filing any type of probate proceeding, it is recommended to complete and send in the [MERP Certification and Authorization Form](#) to determine whether MERP intends to file a claim against the estate.

**A. Exemptions**

1. MERP does NOT apply in cases where there is:

- a. A spouse who is still alive
- b. A child under 21 years of age
- c. A child of any age who is blind or permanently or totally disabled under [42 U.S.C. § 1382c](#)
- d. 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. Tex. Admin. Code § 373.207(a) (for items a-d)
- e. The value of the estate is \$10,000 or less
- f. The amount of Medicaid costs is \$3,000 or less
- g. The cost involved in the sale of the property would be equal to or greater than the value of the property. Tex. Admin. Code §373.25 (for items e-g)
- h. The request for money would cause an undue hardship for the heirs. (Application for Hardship Waiver) Tex. Admin. Code § 373.209

Certain assets and resources of American Indians and Alaska Natives are exempt from estate recovery claims. *See, e.g.*, Tex. Admin. Code § 373.207; [Guide to Medicaid Estate Recovery Program](#).

2. What costs can be recovered?

- a. 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.
- b. 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](#).

## 18.0 DISABILITY RIGHTS IN DISASTERS

### OBLIGATIONS OF UNIT OF LOCAL GOVERNMENT EMERGENCY MANAGEMENT

*(Also refer to Chapter 2)*

#### 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 and Title II of the ADA in the 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 equitable access to response and recovery measures (i.e., inaccessible emergency notifications, emergency sheltering operations, points of distribution of necessities and supplies)
- Options for backup power during sustained or rolling power outages
- Lack of meaningful access to programs and services that are supporting recovery (i.e. barriers in application processes or processes that exclude people with disabilities)
- Community outreach and education that is not inclusive of individuals with disabilities needs

#### 18.3 FAQs

***Q. 18-1 How do you ensure disaster response and recovery measures 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 individual's need. For example, if an individual relies on public or paratransit services, and in the event of a potential disaster is considering evacuation, what are the thresholds for when transportation services will terminate? What are the platforms utilized to provide alerts and notices to the public? If there are sustained power outages how will those who rely on power-dependent equipment be assisted?



**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 Section 504 require 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)**

**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](#), by phone 1-800-621-FEMA (3362) (TTY number: 1-800-462-7585), or in-person at a shelter or Disaster Recovery Center. [FEMA lists specific accommodations](#) they will provide and further explains that if one is not readily available to meet the needs of the disaster survivor they will coordinate services.

If you are denied a reasonable accommodation request you may file a complaint with FEMA's Office of Equal Rights, contact your local legal aid or Disability Rights Texas to seek assistance.

***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 timeline 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 health concerns 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 airborne or environmental hazards created by the disaster, which could impair the individual's ability to stay safely in the residence, and are not taken into account, this 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 health conditions 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 health needs 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 access or an opportunity 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 1-202-212-3535, the main FEMA number at 1-800-621-3362 or (TTY number: 1-800-462-7585), or visit [FEMA's website](#).

## **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](#).

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](#) and [U.S. Department of Justice Civil Rights Division Disability Rights Section](#). 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](#).

### **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 the needs of individuals with disabilities?***

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/destroying 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 et seq.](#), [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 or delay an individual from complying with an HOA expectation to clean up or remove debris from their property in a timely manner. A reasonable accommodation to extend the timeframe for HOA compliance might be appropriate to afford the individual additional time to arrange support. 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. An additional option to consider is filing a Texas Workforce Commission (“TWC”) housing complaint. See [Texas Workforce Commission](#) for details or call: 1-512-463-2642 (Austin area and out-of-state) or 1-888-452-4778 (Texas only).

The Department of Justice (“DOJ”) also addresses housing violations under the FHA. See the [Department of Justice](#) or call 1-202-514-4713; (TTY number: 1-202-305-1882). Call the Housing Discrimination Tip Line 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, the Rehabilitation Act of 1973, and Texas state law protect individuals with disabilities from discrimination in employment. The law covers private employers with 15 or more employees. The law also covers federal, state, and local employers, 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 U.S.C. §§ 791 and 794; 29 CFR pts. 1630, 1614; Tex. Lab. Code Ch. 21.

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 requires employers to engage in an interactive process to determine appropriate reasonable accommodations for 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 and may need to work from home if they are at particular risk from contracting a communicable disease. In this example, working from home could be considered a reasonable accommodation.

#### ***Q. 18-14    How does an individual with a disability request a reasonable accommodation in the workplace?***

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 doing so 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 reasonable medical information in support of the accommodation request.

The request should normally 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 accommodation(s) that the individual is seeking. For example, if the request is to be reassigned to a different job, it is a good idea to 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 I have been discriminated against or unlawfully terminated because of my disability?***

The Equal Employment Opportunity Commission (EEOC) investigates complaints of disability discrimination. For additional information on filing an EEOC complaint, please see the EEOC's guidance on [How to File a Charge of Employment Discrimination](#).

A complaint can also be filed with the Texas Workforce Commission's Civil Rights Division, and information on that process is in the [Texas Workforce Commission's guidance on How to Submit an Employment Discrimination Complaint](#).

For additional information about employment rights, along with the deadlines for filing complaints, please see:

[www.eeoc.gov/laws/guidance/your-employment-rights-individual-disability](http://www.eeoc.gov/laws/guidance/your-employment-rights-individual-disability)

[www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada](http://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada)

[www.disabilityrightstx.org/en/handout/employment-discrimination/](http://www.disabilityrightstx.org/en/handout/employment-discrimination/)

**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. See [VoteTexas](#). In addition, individuals with disabilities are afforded additional protections under ADA, 504, and chapter 121 of the Texas Human Resource Code. See also [VoteTexas](#).

**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:

- a. Get a permanent exemption from the photo ID requirement if they:

- i. Can provide proof (benefit verification letter) to the county voter registrar that they have a disability determination from the U.S. Social Security Administration, OR
- ii. Is a veteran who can provide proof (rating percentage letter) to the county voter registrar that they have a disability rating of more than 50% from the U.S. Department of Veterans Affairs; AND
- iii. 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. See [Request for Disability Exemption](#).

b. 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 for general contact information, see [Disability Rights](#). For general resources, please see [League of Women Voters](#).

## **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. Federal law now mandates that all Federal benefit payments be made electronically. To switch if you still receive paper checks, visit [GoDirect](#) or call the Treasury's Electronic Payment Solution Center at 1-800-333-1795. [Social Security](#). See generally [Texas Law Help](#).

#### ***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 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 (TTY number: 1-800-325-0778) or [online](#).

***Q. 18-19 May I still receive SSA benefits if I also receive unemployment assistance due to a disaster/emergency?***

Maybe. While it is possible to receive both unemployment and SSA benefits, it is not usual. Also, receiving SSA benefits may reduce your unemployment compensation. 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. See [Unemployment Benefits Services](#); [Economic Impact Payments](#).

Protection and Advocacy for Beneficiaries of Social Security (PABSS) at Disability Rights Texas may be able to assist. To complete an intake application, call 1-800-252-9108 Monday through Friday, 9:00 A.M. to 4:00 P.M., or [apply online](#) at any time. Individuals who are deaf or hard of hearing can call the toll-free video phone at 1-866-362-2851 or the Purple 2 video phone at 1-512-271-9391. See [Disability Rights](#).

Another resource might be Community Work Incentive Coordinators (CWICs) at Work Incentives Planning and Assistance (WIPA) projects. 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 [Ticket to Work](#) or call Ticket to Work at 1-866-968-7842 (TTY number: 1-866-833-2967).

Also of note, any disaster benefits or awards received under a Major Disaster Declaration should not count as income and impact SSA benefits. However, there are some distinctions between disaster assistance, credits or other types of benefits that may become available after a disaster. For clarification, always seek advice from the SSA department either [online](#) or by calling 1-800-772-1213.

***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 at [Office of the Inspector General](#), [Office of the Attorney General](#) or call (800) 621-0508, file [Better Business Bureau complaint](#) or call 1-703-276-0100 or



even file a [Federal Communications Commission complaint](#) or call 1-888-225-5322 (TTY number: 1-888-835-5322) (Videophone number: 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.

#### **A. *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. Sections 558.403(w)(2) and 558.871 contain additional licensing standards for a hospice inpatient unit.

An 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 an 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 commonly 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.

#### **B. *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, 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 [here](#) or contact HHSC customer service at 1-877-541-7905.

***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, alternative energy sources, 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 Preadmission 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 MI, IDD, 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 A.M. to 4:00 P.M., or you can apply [online](#) at any time.

To file a complaint against a nursing facility, home health, assisted living facility, or state supported living centers, contact: [Texas Health and Human Services Complaint](#) and Incident Intake at 1-800-458-9858. For more general information and to learn about your rights, contact the [Office of the State Long-Term Care Ombudsman](#) at 1-800-252-2412.

## **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 or emergency leads to an alternative instructional environment, where instruction is provided 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 Chapter 14.*

***Q. 18-29 I am in college and my classes are offered online. Will they be accessible?***

Yes. Talk to the school's disability services office and your professors to review your current accommodations and to make any adjustments that are necessary for you to have meaningful access to the classes and materials. 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 during the pandemic, 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. 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. However, 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 school campuses 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.

***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

Private community organizations or one or more local, state, or federal agencies can provide disaster assistance when a referral to an attorney is not the best course of action. 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, Centers for Disease Control and Prevention (CDC), and the Federal Emergency Management Agency (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>The federal COVID-19 Public Health Emergency declaration ended on May 11, 2023. As such, while reporting frequency and source data for some metrics will subside, the agency will continue to report valuable data to inform individual and community health actions to protect the nation's health. The website below remains in operation with current details about COVID-19 health measures.</p> <p><a href="http://www.coronavirus.gov">www.coronavirus.gov</a></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"><li>• Find disaster assistance that meets an individual's particular circumstances</li><li>• Apply for disaster assistance and reduce the number of required forms</li><li>• Check the status of applications</li><li>• Find a FEMA Disaster Recovery Center nearby</li><li>• Find a hotel or a new place to live</li><li>• Find programs to help with food and nutrition needs</li><li>• Change address for Social Security, VA, or other federal benefits</li><li>• Learn about Small Business Administration (SBA) loans for homeowners, renters, and businesses</li></ul> <p><a href="http://www.disasterassistance.gov">www.disasterassistance.gov</a></p>
FEMA Assistance	<p><b>FEMA Helpline</b> Call 7 A.M. to 11 P.M. ET, 7 days a week: <b>1-800-621-FEMA (1-800-621-3362)</b> <b>TTY 1-800-462-7585</b></p>

	<p>711 or VRS 1-800-621-3362 Or write to: 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"> <li>1. Use the DRC locator found at <a href="https://egateway.fema.gov/ESF6/DRCLocator">egateway.fema.gov/ESF6/DRCLocator</a></li> <li>2. Text <b>DRC</b> and a <b>Zip Code</b> to 4FEMA (43362). Example: "DRC 01234." Using this option does not add you to any messaging service.</li> </ol>
Crisis Counseling Assistance	<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—1-800-985-5990 FEMA Helpline—1-800-621-3362 (TTY number: 1-800-846-8517).</p> <p>For more information: <a href="https://www.samhsa.gov/dtac/ccp">www.samhsa.gov/dtac/ccp</a></p>
Emergency Housing	
General	<p>Search for open shelters near you by texting <b>SHELTER</b> and a <b>Zip Code</b> to 4FEMA (43362). Example: "SHELTER 01234." Using this option does not add you to any messaging service.</p>
FEMA Evacuee Hotels	<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 hearing, or with speech disabilities, the Teletypewriter number is 1-800-462-7585.</p> <p><a href="https://www.femaevachotels.com">www.femaevachotels.com</a></p>



American Red Cross	<p>You can find shelters by:</p> <ul style="list-style-type: none"> <li>• Visiting <a href="http://www.redcross.org">www.redcross.org</a></li> <li>• Downloading the “Emergency Red Cross Mobile” app</li> <li>• Calling 1-800-REDCROSS (1-800-733-2767)</li> </ul>
Salvation Army	<p>Enter your zip code at the top of the screen to find the nearest Salvation Army location:</p> <p><a href="http://www.salvationarmyusa.org">www.salvationarmyusa.org</a></p>
<b>Family Locators</b>	
Safe and Well	<p>The American Red Cross maintains a web-based system that helps reunite friends and family displaced by a disaster. For reunification requests call 1-800-REDCROSS (1-800-733-2767).</p> <p><a href="http://www.redcross.org/get-help/disaster-relief-and-recovery-services/contact-and-locate-loved-ones.html">www.redcross.org/get-help/disaster-relief-and-recovery-services/contact-and-locate-loved-ones.html</a></p>
National Center for Missing & Exploited Children	<p>The National Emergency Child Locator Center is operated by the National Center for Missing &amp; 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><a href="http://www.nokr.org">www.nokr.org</a></p>
Other	<p>USA.gov also offers other sources for locating family.</p> <p><a href="http://www.usa.gov/after-disaster">www.usa.gov/after-disaster</a></p>
<b>Finding and Caring for Pets</b>	
Pet-Friendly Hotels	<p>For a list of pet-friendly hotels, please visit:</p> <p><a href="http://www.gopetfriendly.com">www.gopetfriendly.com</a></p>

<b>Animal Assistance Organizations</b>	<p> <b>Humane Society (HQ Washington, DC)</b>  <b>1-866-720-2676 (M-F 8:00 A.M. to 11:00 P.M.)</b>  <a href="http://www.humanesociety.org">www.humanesociety.org</a> </p> <p> <b>Wings of Rescue</b>  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> <a href="http://www.wingsofrescue.org">www.wingsofrescue.org</a> </p> <p> <b>ASPCA</b>  <a href="http://www.asPCA.org">www.asPCA.org</a> </p> <p> <b>GreaterGood.org</b>  <a href="http://greatergood.org">greatergood.org</a> </p> <p> <b>Best Friends Animal Society</b>    General Information—1-435-644-2001  <a href="http://bestfriends.org">bestfriends.org</a> </p>
<b>Legal Services Hotlines</b>	
<b>Disaster Legal Services Program</b>	<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> <b>Hotline:*</b>  Texas     <b>1-800-504-7030</b>  (Routed to legal aid providers in individual's area) </p> <p> *Hotline is available in English and Spanish </p>
<b>Advocates for Disaster Justice</b>	<p> The Advocates for Disaster Justice 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. </p> <p> <a href="http://www.advocatesfordisasterjustice.org/about">www.advocatesfordisasterjustice.org/about</a> </p>

State Bar Associations	<p><b>Texas</b>  1-800-204-2222  <a href="http://www.texasbar.com">www.texasbar.com</a></p> <p><b>Alabama</b>  1-800-354-6154  <a href="http://www.alabar.org">www.alabar.org</a></p> <p><b>Louisiana</b>  1-800-421-5722  <a href="http://www.lsba.org">www.lsba.org</a></p> <p><b>Mississippi</b>  1-601-948-4471  <a href="http://www.msbar.org">www.msbar.org</a></p> <p><b>Florida</b>  1-850-561-5600  <a href="http://www.floridabar.org">www.floridabar.org</a></p>
International Evacuees	
General Consulate Information	<a href="http://www.usembassy.gov">www.usembassy.gov</a>
Select Embassy Information in Houston, Texas	<p><b>Canada</b>      1-713-821-1440</p> <p><b>Costa Rica</b>      1-713-266-0484</p> <p><b>El Salvador</b>      1-888-301-1130 / 1-713-773-3539</p> <p><b>France</b>      1-346-272-5363</p> <p><b>Guatemala</b>      1-713-953-9531</p> <p><b>Honduras</b>      1-346-201-6711 / 1-713-785-5931</p> <p><b>Mexico</b>      1-713-271-6800 / 1-713-995-1227</p> <p><b>Nicaragua</b>      1-713-789-2762</p> <p><b>Panama</b>      1-713-622-4451</p> <p><b>Vietnam</b>      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: <a href="https://www.healthcare.gov/screener">www.healthcare.gov/screener</a>.</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><a href="https://www.healthcare.gov/coronavirus">www.healthcare.gov/coronavirus</a></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> <p><a href="https://www.fema.gov/national-flood-insurance-program">www.fema.gov/national-flood-insurance-program</a></p>
National Association of Insurance Commissioners	<p>1-816-783-8500</p> <p><a href="https://www.naic.org">www.naic.org</a></p>
Charitable Organizations (Recommended by FEMA)	
American Red Cross Disaster Donations	<p>Donate—1-800-435-7669</p> <p><a href="https://www.redcross.org">www.redcross.org</a></p>
Red Cross of Houston	<p>1-713-526-8300—2700 Southwest Freeway, Houston, TX</p> <p><a href="https://www.redcross.org/local/texas/gulf-coast/about-us/locations/houston.html">www.redcross.org/local/texas/gulf-coast/about-us/locations/houston.html</a></p>
Catholic Charities in Houston-Galveston	<p>1-713-526-4611—2900 Louisiana Street, Houston, TX 1-713-227-9981—326 South Jensen Drive, Houston, TX</p> <p><a href="https://www.catholiccharities.org">www.catholiccharities.org</a></p>

Salvation Army Disaster Relief	1-713-752-0677—1500 Austin Street, Houston, TX  <a href="http://www.salvationarmyhouston.org">www.salvationarmyhouston.org</a>
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)  <a href="http://www.usa.gov">www.usa.gov</a>
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 number—1-877-889-5627  <a href="http://www.disasterassistance.gov/get-assistance/forms-of-assistance/4466">www.disasterassistance.gov/get-assistance/forms-of-assistance/4466</a>
Equal Employment Opportunity Commission	1-800-669-4000 Hearing Impaired—1-800-669-6820 ASL Video Phone—1-844-234-5122  <a href="mailto:info@eeoc.gov">info@eeoc.gov</a> (include zip code and/or city and state so that your email will be sent to the appropriate office)  <a href="http://www.eeoc.gov">www.eeoc.gov</a>

Social Security Administration	1-800-772-1213 TTY number—1-800-325-0778  <a href="http://www.ssa.gov">www.ssa.gov</a>
United States Postal Service	1-800-ASK-USPS (1-800-275-8777) TTY number—1-800-877-8339  <a href="http://www.usps.gov">www.usps.gov</a>  USPS is reminding customers to complete change-of-address requests, especially if they expect to be out of their homes for extended periods.
U.S. Department of	1-800-MEDICARE (1-800-633-4227) TTY number—1-877-486-2048

<b>Health &amp; Human Services (Medicare)</b>	<a href="http://www.medicare.gov">www.medicare.gov</a>
<b>Veterans Affairs</b>	1-800-698-2411 TTY number—7-1-1  <a href="http://www.va.gov">www.va.gov</a>  VA Crisis Line (available 24/7)—1-800-273-8255 then press 1 Suicide and Crisis Lifeline—988 Text—838255
<b>Department of Education</b>	1-800-872-5327 TTY number—1-800-877 8339  <a href="http://www.ed.gov">www.ed.gov</a>
<b>U.S. Department of Housing and Urban Development (HUD)</b>	Fraud Line—1-800-347-3735 Fair Housing—1-800-669-9777 Fair Housing TTY number—1-800-877-8339  <a href="http://www.hud.gov">www.hud.gov</a>  Ft. Worth Regional Office—1-817-978-5600  Houston Field Office—1-713-718-3199  San Antonio Field Office—1-210-475-6800
<b>Internal Revenue Service</b>	1-800-829-1040 TTY number—1-800-829-4059  <a href="http://www.irs.gov">www.irs.gov</a>
<b>Federal Citizen Information Center (f/k/a Federal Consumer Information Center)</b>	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.  Questions Only—1-719-295-2675  <a href="http://pueblo.gpo.gov/Publications/PuebloPubs.php">pueblo.gpo.gov/Publications/PuebloPubs.php</a>
<b>U.S. Immigration and Customs Enforcement (ICE)</b>	Report Crimes—1-866-347-2423 TTY number—1-802-872-6196  Detainee-Related Information—1-888-351-4024

	<a href="http://www.ice.gov">www.ice.gov</a>
Department of Homeland Security	<p>Main—1-202-282-8000</p> <p>Comments—1-202-282-8495</p> <p><a href="http://www.dhs.gov">www.dhs.gov</a></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 <a href="http://www.sba.gov">www.sba.gov</a>, in person at a FEMA Disaster Recovery Center, or by mail.</p> <p><a href="http://www.sba.gov">www.sba.gov</a>  <a href="https://disasterloanassistance.sba.gov/ela/s">disasterloanassistance.sba.gov/ela/s</a></p> <p>Call 1-800-659-2955 or email at <a href="mailto:disastercustomerservice@sba.gov">disastercustomerservice@sba.gov</a>  TTY number—1-800-877-8339</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"> <li>—Paycheck Protection Program (PPP)</li> <li>—Shuttered Venue Operators Grant (SVOG)</li> </ul>

<b>SBA Paycheck Protection Program (PPP)</b>	<p>The PPP is a loan designed to provide incentive for small businesses to keep their workers on the payroll. The PPP ended on May 31, 2021, but existing borrowers may be eligible for PPP loan forgiveness.</p> <p>SBA will forgive loans if all employees are kept on the payroll for 8 to 24 weeks following loan disbursement; if the money is used for payroll, rent, mortgage interest, or utilities; and if at least 60% of the money is used for payroll.</p> <p>Apply for loan forgiveness through your PPP lender and complete SBA Form 3508, SBA Form 3508EZ, SBA Form 3508S, or a lender equivalent. You will also need to provide payroll information for all payroll periods that overlap with the covered period and all documentation related to expenses that occurred during the covered period.</p> <p>SBA PPP webpage—<a href="https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program/ppp-loan-forgiveness">www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program/ppp-loan-forgiveness</a></p>
<b>Shuttered Venue Operators Grant (SVOG)</b>	<p>The Shuttered Venue Operators Grant (SVOG) provides financial assistance to venue operators or promoters that faced financial hardship due to COVID-19. The business must have been in operation as of February 29, 2020. Entities that suffered the highest gross revenue loss between April 2020 and December 2020 will have the highest priority.</p> <p>For eligible entities in operation as of January 1, 2019, grants will be either 45% of 2019 gross earned revenue or \$10 million, whichever is less. For eligible entities that began operation after January 1, 2019, grants will be the average monthly gross earned revenue for each full month of operation in 2019 multiplied by six or \$10 million, whichever is less.</p> <p>For more information, visit—<a href="https://www.sba.gov/funding-programs/loans/covid-19-relief-options/shuttered-venue-operators-grant">www.sba.gov/funding-programs/loans/covid-19-relief-options/shuttered-venue-operators-grant</a>.</p> <p>Notice: SVOG is no longer accepting new applications. The SVOG portal remains open to all active applicants and awardees.</p> <p>SVOG FAQs—<a href="https://www.sba.gov/sites/default/files/2021-04/SVOG%20FAQs%204-23-21%20FINAL-508.pdf">www.sba.gov/sites/default/files/2021-04/SVOG%20FAQs%204-23-21%20FINAL-508.pdf</a></p>
<b>Bankruptcy</b>	<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: <a href="https://www.natlawreview.com/article/inside-cares-act-changes-to-bankruptcy-code-under-cares-act">www.natlawreview.com/article/inside-cares-act-changes-to-bankruptcy-code-under-cares-act</a>.</p> <p>For businesses considering bankruptcy, please consult with an attorney (see “Legal Services” below).</p>



Credit Bureaus	
Equifax	1-888-548-7878
Experian	1-888-397-3742
Trans Union	1-800-916-8800

## 19.2 Texas Disaster Assistance

General Assistance	
Texas Hurricane Center	<p><a href="http://gov.texas.gov/hurricane">gov.texas.gov/hurricane</a></p> <p>Houston Emergency Updates Call 3-1-1 or 1-713-884-3131</p> <p>Road Conditions 1-800-452-9292 <a href="http://drivetexas.org">drivetexas.org</a></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)	Disaster Relief	1-800-525-0657 1-800-621-3362
	Emergency & Homeless Services (short-term rent help, eviction relief, and legal aid services)	1-800-525-0657
	Fair Housing/Housing Discrimination	1-888-995-4673
	Home Modification for Accessibility	1-800-525-0657
	Home Repair Assistance	1-800-525-0657
	Homebuyer Assistance & Education	1-800-792-1119
	Loan Servicing	1-800-298-4013
	Manufactured Housing	1-800-500-7074
	Migrant Labor Housing	1-877-313-3023
	Reduced Rent Apartments	1-800-525-0657
	Rent Payment Help (Section 8)	1-800-237-6500 1-800-955-2232
	Rent Payment Help (eviction relief, legal aid)	1-800-525-0657
	Utility Bill Payment Help	1-877-399-8939 1-877-541-7905
	Weatherization	1-888-606-8889
	Headquarters	Call weekdays 8 A.M. to 5 P.M. 1-512-475-3800 1-800-525-0657 TTY number—1-800-735-2989  Email— <a href="mailto:info@tdhca.state.tx.us">info@tdhca.state.tx.us</a> <a href="http://www.tdhca.state.tx.us">www.tdhca.state.tx.us</a>

Child Support Checks	
Texas	<p>Texas Attorney General  1-800-252-8014  <a href="http://www.oag.state.tx.us/child-support">www.oag.state.tx.us/child-support</a></p>
Unemployment Assistance	
Disaster Unemployment Assistance (DUA)	<p>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.</p> <p><a href="http://www.twc.state.tx.us/jobseekers/disaster-unemployment-assistance">www.twc.state.tx.us/jobseekers/disaster-unemployment-assistance</a></p> <p>Texas Workforce Commission Tele-Center:  Call weekdays 8 A.M. to 6 P.M.  1-800-939-6631</p>
Insurance Information	
Texas Department of Insurance	<p>Texas Department of Insurance Consumer Help Line  Call 8 A.M. to 5 P.M.  1-800-252-3439</p> <p><a href="http://www.tdi.texas.gov">www.tdi.texas.gov</a></p>
Texas Windstorm Insurance Association	<p>Call weekdays 8 A.M. to 5 P.M.  1-800-788-8247</p> <p><a href="http://www.twia.org">www.twia.org</a></p>

Legal Services	
State Bar of Texas	<p>Phone: 1-512-427-1463 Fax: 1-800-204-2222</p> <p><a href="http://www.texasbar.com">www.texasbar.com</a></p> <p>Legal Hotline—1-800-504-7030 Lawyer Referral—1-800-252-9690 Call weekdays 8:30 A.M. to 4:30 P.M.</p>
Houston Bar Association	<p>LegalLine is a hotline designed to help the people of Houston receive simple legal advice, answers, and referrals for free. All volunteers are Texas- licensed attorneys.</p> <p>The Houston Bar Association is currently holding virtual LegalLine sessions on the first and third Wednesdays of each month. Use the following link to sign up for a session:</p> <p><a href="http://www.hba.org/?pg=about-legalline">www.hba.org/?pg=about-legalline</a></p> <p>1-713-759-1133</p> <p><a href="http://www.hba.org">www.hba.org</a></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><a href="http://www.lonestarlegal.org">www.lonestarlegal.org</a></p> <p>Disaster-related questions—1-866-659-0666</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 RioGrande Legal Aid	<p>Servicing South, Central, and West Texas.</p> <p><a href="http://www.trla.org">www.trla.org</a></p> <p>General—1-833-329-TRLA (8752)</p> <p>Disaster-related questions—1-956-996-TRLA (8752)</p>

<b>Legal Aid of NorthWest Texas</b>	<p>Eviction-related questions—1-855-548-8457 Disaster-related questions—1-817-339-5391</p> <p><a href="http://www.lanwt.org">www.lanwt.org</a></p> <p>To apply, visit <a href="http://www.lanwt.org/gethelp">www.lanwt.org/gethelp</a></p>
<b>Disability Rights Texas</b>	<p>1-800-252-9108 Sign Language Video Phone—1-866-362-2851</p> <p><a href="http://www.disabilityrightstx.org">www.disabilityrightstx.org</a></p>
<b>Aid to Victims of Domestic Abuse</b>	<p>1-713-224-9911 24-Hour National DV Hotline—1-800-799-7233</p> <p><a href="http://avda-tx.org">avda-tx.org</a></p>
<b>American Civil Liberties Union</b>	<p>1-713-942-8146 1-888-653-6498</p> <p>Austin Office—1-512-478-7300 Dallas Office—1-214-346-6575 El Paso Office—1-915-533-8091 Rio Grande Valley Office—1-956-338-1603</p> <p><a href="http://www.aclutx.org">www.aclutx.org</a></p>
<b>Family Violence Legal Hotline</b>	<p>1-800-374-HOPE (4673)</p> <p><a href="http://www.texasadvocacyproject.org">www.texasadvocacyproject.org</a></p>

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><a href="http://www.texasrealestate.com/about-us/newsroom/coronavirus-faqs/coronavirus-faqs-leasing-property-mangement">www.texasrealestate.com/about-us/newsroom/coronavirus-faqs/coronavirus-faqs-leasing-property-mangement</a></p>
Legal Services (Bexar County)	
San Antonio Bar Association	<p>1-210-227-8822</p> <p><a href="http://www.sanantoniobar.org">www.sanantoniobar.org</a></p>
San Antonio Young Lawyers Association	<p>1-210-294-6775</p> <p><a href="http://www.sayla.org">www.sayla.org</a></p>
Legal Services (Collin County)	
Plano Bar Association	<p>1-972-424-6113</p> <p><a href="http://www.planobar.org">www.planobar.org</a></p>

Legal Services (Dallas County)	
Dallas Bar Association	1-214-220-7400 <a href="http://www.dallasbar.org">www.dallasbar.org</a>
Dallas Association of Young Lawyers	1-214-969-7675 <a href="http://www.dayl.com">www.dayl.com</a>
Dallas Criminal Defense Lawyers Association	<a href="http://dcdla.com">dcdla.com</a>
North Dallas Bar Association	1-972-980-0472 <a href="http://attorneys-dallas.com/contact-us">attorneys-dallas.com/contact-us</a>
Legal Services (El Paso County)	
El Paso Bar Association	1-915-532-7052 <a href="http://elpasobar.com">elpasobar.com</a>
Harris County	
Houston Bar Association	1-713-759-1133 <a href="http://www.hba.org">www.hba.org</a>
Houston Young Lawyers Association	1-713-224-4952 <a href="http://www.hyla.org">www.hyla.org</a>
Houston Bar Lawyer Referral Service	1-713-237-9429 <a href="http://hls.org">hls.org</a>
Harris County Criminal Lawyers Association	1-713-227-2404 <a href="http://www.hccla.org">www.hccla.org</a>
Dispute Resolution Center	1-713-274-7100 <a href="http://drc.harriscountytexas.gov">drc.harriscountytexas.gov</a>

Harris County Domestic Relations Office	<b>1-713-274-7300</b> <a href="http://dro.harriscountytexas.gov">dro.harriscountytexas.gov</a>
Harris County DA's Office	<b>Main—1-713-274-5800</b> <a href="http://www.harriscountytexasda.com">www.harriscountytexasda.com</a>  <b>Consumer Fraud—1-713-274-5555</b>  <b>Family Violence Unit—1-713-274-0212</b>  <b>General Intake &amp; Information/Receptionist—1-713-274-5800</b>
South Texas College of Law Legal Clinic	<b>1-713-646-2990</b>  <a href="http://www.stcl.edu/academics/legal-clinics">www.stcl.edu/academics/legal-clinics</a>
Texas Southern University	<b>Thurgood Marshall School of Law Legal Clinic</b>  <b>1-713-313-7275</b> <a href="http://www.tsulaw.edu/legal_clinic">www.tsulaw.edu/legal_clinic</a>  <b>The Earl Carl Institute for Legal and Social Policy, Inc.</b>  <b>1-713-313-4455</b> <a href="http://www.tsulaw.edu/centers/ECI">www.tsulaw.edu/centers/ECI</a>
University of Houston Legal Aid Clinic	<b>General—1-713-743-2100 (General)</b>  <b>Legal Clinics—1-713-743-2094</b>  <a href="http://www.law.uh.edu/clinic">www.law.uh.edu/clinic</a>
<b>Legal Services (Jefferson County)</b>	
Jefferson County Bar Association	<b>1-409-835-8647</b>  <b>1-409-835-8438</b>  <b>1-409-835-4971 (Lone Star Legal Aid)</b>  <a href="http://www.jcba.org">www.jcba.org</a>



Legal Services (Nueces County)	
Corpus Christi Bar Association	<b>1-361-883-4022</b> <a href="http://www.corpusbar.com">www.corpusbar.com</a>
Legal Services (Tarrant County)	
Tarrant County Bar Association	<b>1-817-336-4101</b> <a href="http://www.tarrantbar.org">www.tarrantbar.org</a> LegalLine—1-817-335-1239 (2 <sup>nd</sup> and 4 <sup>th</sup> Thursday each month, 6 P.M. to 8 P.M.)
Arlington Bar Association	<b>1-703-228-3390</b> <a href="http://www.arlingtonbar.org">www.arlingtonbar.org</a>
Texas Legal Services Center (Elderly Issues)	<b>1-800-622-2520 (for veterans or seniors)</b> <a href="http://www.tlsc.org/seniors">www.tlsc.org/seniors</a>
Legal Services (Travis County)	
Austin Bar Association	<b>1-512-472-0279</b> <a href="http://www.austinbar.org">www.austinbar.org</a>
Lawyer Referral Service of Central Texas	<b>1-512-472-8303</b> <a href="http://www.austinlrs.com">www.austinlrs.com</a>

Texas Attorney General	
Main Agency Switchboard	1-512-463-2100 <a href="http://www.oag.state.tx.us">www.oag.state.tx.us</a>
Consumer Complaints (e.g., price gouging)	1-800-621-0508
Public Information & Assistance (Constituent Affairs)	1-800-252-8011 or 1-512-475-4413 (in Austin)
Consumer protection hotline	1-800-621-0508
Child Support (to apply for services)	1-800-252-8014 (automated information) or 1-512-460-6000 (Weekdays 8:30 A.M.—4:30 P.M.)
Other State Agencies & Resources	
Texas Department of Assistive & Rehabilitative Services (helping with physical or mental disabilities in employment matters)	1-855-937-2372  Division for Rehabilitative Services—1-254-770-5800  Division for the Blind—1-254-753-1552  <a href="http://ctadvrc.org/blog/projects/texas-department-of-assistive-and-rehabilitative-services">ctadvrc.org/blog/projects/texas-department-of-assistive-and-rehabilitative-services</a>
Texas Department of Mental Health	1-512-776-7111 / 1-888-963-7111 1-800-989-6884 (Texas Youth Hotline)  <a href="http://www.hhs.texas.gov/services/mental-health-substance-use">www.hhs.texas.gov/services/mental-health-substance-use</a>
Texas Department of State Health Services (including mental health)	1-512-776-7111 / 1-888-963-7111  <a href="http://www.dshs.state.tx.us">www.dshs.state.tx.us</a>
Texas Department of Housing & Community Affairs	1-512-475-3800 / 1-800-525-0657  <a href="http://www.tdhca.state.tx.us">www.tdhca.state.tx.us</a>
Department of Licensing & Regulation	1-512-463-6599 / 1-800-803-9202  <a href="http://www.tdlr.texas.gov">www.tdlr.texas.gov</a>

<b>Department of Public Safety</b>	<b>Austin Headquarters—1-512-424-2000</b> <a href="http://www.dps.texas.gov">www.dps.texas.gov</a> <b>DPS Driver License &amp; Customer Service—1-512-424-2600</b>
<b>Division of Worker's Compensation</b>	<b>1-800-252-7031</b> <a href="http://www.tdi.texas.gov/wc">www.tdi.texas.gov/wc</a>
<b>Texas Department of Education</b>	<b>1-512-463-9734</b> <a href="http://www.tea.state.tx.us">www.tea.state.tx.us</a>
<b>Texas Health and Human Services—Aging</b>	<b>Austin Headquarters—1-855-937-2372</b> <a href="http://hhs.texas.gov/services/aging">hhs.texas.gov/services/aging</a>

### 19.3 Services by Affinity Group

<b>Alcoholics Anonymous</b>	
<b>Houston Office</b>	<b>1-713-686-6300</b> <a href="http://aahouston.org">aahouston.org</a>
<b>Austin Office</b>	<b>1-512-444-0071</b> <a href="http://austinaa.org">austinaa.org</a>
<b>Dallas Office &amp; Help Line</b>	<b>1-214-887-6699</b> <a href="http://www.aadallas.org/wordpress">www.aadallas.org/wordpress</a>
<b>San Antonio Office &amp; Help Line</b>	<b>1-210-828-6235</b> <b>Spanish Hotline—1-210-409-8524</b> <a href="http://aasanantonio.org">aasanantonio.org</a>
<b>Immigration Services</b>	

Catholic Charities of the Archdioceses of Galveston-Houston	1-713-595-4100 / 1-713-874-6750 (St. Frances Cabrini Center for Immigrant Legal Assistance)  <a href="http://www.catholiccharities.org">www.catholiccharities.org</a>
Central American Resource Center	1-713-665-1284  <a href="mailto:carecenhouston@gmail.com">carecenhouston@gmail.com</a>
Casa Juan Diego	1-713-869-7376  <a href="http://cid.org">cid.org</a>
Immigration Counseling Center	1-713-953-0047  <a href="mailto:icci@peoplepc.com">icci@peoplepc.com</a>
Family, Women, and Youth Services	
Al-Anon Family Groups (Families coping with alcoholism)	1-713-683-7227  <a href="http://www.houstonalanon.org">www.houstonalanon.org</a>
Association for the Advancement of Mexican Americans, Inc. (AAMA)	1-713-967-6700  <a href="http://www.aama.org">www.aama.org</a>
Avance Family Support & Education Program (AAMA)	1-713-812-0033  <a href="http://www.avancehouston.org">www.avancehouston.org</a>
Big Brothers Big Sisters of Greater Houston	1-888-887-2447  <a href="http://www.bbbstx.org">www.bbbstx.org</a>
Casa de Esperanza/Bilingual	1-713-529-0639  <a href="http://www.casahope.org">www.casahope.org</a>
Community Family Center/Bilingual	1-713-923-2316  <a href="http://www.communityfamilycenters.org">www.communityfamilycenters.org</a>

Child Advocates, Inc.	1-713-529-1396
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	<a href="http://www.childadvocates.org">www.childadvocates.org</a>
<b>Children Assessment Center, (The CAC)</b>	1-713-986-3300 <a href="http://cachouston.org">cachouston.org</a>
<b>Children’s Protective Services—Harris County Protective Services for Children and Adults</b>	1-713-394-4000  To report abuse or neglect—1-800-252-5400  TRIAD Prevention Program—1-713-295-2600  <a href="http://www.hc-ps.org">www.hc-ps.org</a>
<b>Covenant House</b>	1-713-523-2231  <a href="http://www.covenanthousetx.org">www.covenanthousetx.org</a>
<b>DePelchin Children’s Center</b>	Houston—1-713-730-2335  Toll Free Outside of Houston—1-888-730-2335  Austin—1-512-719-3222  San Antonio—1-210-691-3222  Lubbock—1-806-745-3222  <a href="http://www.depelchin.org">www.depelchin.org</a>
<b>Escape Family Resource Center</b>	1-713-942-9500  <a href="http://www.learntoparent.org">www.learntoparent.org</a>
<b>Family Life Ministry</b>	1-713-659-5461  <a href="http://www.archgh.org/offices-ministries/pastoral-educational-ministries/family-life-ministry">www.archgh.org/offices-ministries/pastoral-educational-ministries/family-life-ministry</a>
<b>Family Services of Greater Houston</b>	Central Location—1-713-861-4849  <a href="http://www.familyhouston.org">www.familyhouston.org</a>
<b>Family Time Crisis Hotline</b>	1-281-446-2615  <a href="http://familytimeccc.org">familytimeccc.org</a>

<b>Jewish Community Center</b>	<b>1-713-729-3200</b>  <a href="http://www.erjcchouston.org">www.erjcchouston.org</a>
<b>Jewish Family Service</b>	<b>1-713-667-9336</b>  <a href="http://www.jfshouston.org">www.jfshouston.org</a>
<b>Justice for Children</b>	<b>1-713-225-4357</b>  <b>Helpline—1-800-733-0059</b>  <a href="http://justiceforchildren.org">justiceforchildren.org</a>
<b>Learning Support Center at Texas Children's Hospital</b>	<b>Return Appointments—1-832-822-3700</b> <b>New Patients—1-832-822-1900</b> <b>Speech, Language, and Learning—1-832-822-3280</b>  <a href="http://www.texaschildrens.org/departments/psychology">www.texaschildrens.org/departments/psychology</a>  <a href="http://www.texaschildrens.org/departments/speech-language-and-learning">www.texaschildrens.org/departments/speech-language-and-learning</a>
<b>Aids to Victims of Domestic Abuse</b>	<b>1-713-224-9911</b>  <a href="http://avda-tx.org">avda-tx.org</a>
<b>S.H.A.P.E. Community Center</b>	<b>Harambee Administrative Office—1-713-521-0629</b>  <b>Nia Becnel Family Center—1-713-521-0641</b>  <a href="http://www.shape.org">www.shape.org</a>
<b>University of Texas Psychiatric Services</b>	<b>1-713-741-5000</b>  <a href="http://hcpc.uth.edu">hcpc.uth.edu</a>
<b>University of Houston-Parent Education Project</b>	<b>Families Can Program—1-713-743-5491</b>  <a href="http://www.uh.edu/education/pep">www.uh.edu/education/pep</a>
<b>University of Houston-Psychology Research &amp; Services Center</b>	<b>1-713-743-9682</b>  <a href="http://uh.edu/class/psychology/clinics">uh.edu/class/psychology/clinics</a>
<b>Texas Crime Victims Clearinghouse (Victim Services Division)</b>	<b>1-800-848-4284</b>

	<a href="http://www.tdcj.texas.gov/divisions/vs">www.tdcj.texas.gov/divisions/vs</a>
<b>Women's Hospital of Texas Education Department</b>	<p>Patient Education—1-281-438-4357</p> <p><a href="http://womanshospital.com">womanshospital.com</a></p> <p><a href="http://womanshospital.com/patient-education">womanshospital.com/patient-education</a></p>
<b>Bay Area Turning Point</b>	<p>24-Hour Hotline—1-281-286-2525</p> <p><a href="http://www.bayareaturningpoint.org">www.bayareaturningpoint.org</a></p>
<b>The Bridge Over Troubled Waters</b>	<p>24-Hour Emergency Hotline—1-713-473-2801</p> <p>Administration (Pasadena Office)—1-713-472-0753</p> <p>Administration (Baytown Office)—1-281-420-5600</p> <p><a href="http://www.thebridgeovertroubledwaters.org">www.thebridgeovertroubledwaters.org</a></p>
<b>Women's Center of Brazoria County</b>	<p>Administrative Office—1-979-849-9553</p> <p>24-Hour Hotline (Central &amp; South County)—1-800-243-5788</p> <p>24-Hour Hotline (North County)—1-281-585-0902</p> <p><a href="http://www.womenscenterbc.com">www.womenscenterbc.com</a></p>
<b>Fort Bend County Women's Center</b>	<p>Office—1-281-344-5750</p> <p>24-Hour Hotline—1-281-342-4357</p> <p><a href="http://www.fortbendwomenscenter.org">www.fortbendwomenscenter.org</a></p>
<b>Houston Area Women's Center</b>	<p>Business—1-713-528-6798</p> <p>Domestic Violence Hotline—1-713-528-2121</p> <p>Sexual Assault Hotline—1-713-528-7273</p> <p><a href="http://www.hawc.org">www.hawc.org</a></p>

<b>Montgomery County Women's Center</b>	<b>24-Hour Hotline—1-936-441-7273</b> <b>24-Hour Hotline (Spanish) —1-936-441-7273</b> <b>Business—1-936-441-4044</b>  <a href="http://mcwctx.org">mcwctx.org</a>
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Senior Services	
<b>Alzheimer's Association—Houston and Southeast Texas Chapter</b>	<b>Houston Chapter—1-713-314-1313</b> <b>24-Hour Helpline—1-800-272-3900</b>  <a href="http://www.alz.org/texas">www.alz.org/texas</a>
<b>AARP</b>	<b>Dallas Office—1-866-227-7443</b>  <a href="http://www.aarp.org">www.aarp.org</a>
<b>American Cancer Society</b>	<b>Cancer Helpline—1-800-227-2345</b>  <a href="http://www.cancer.org">www.cancer.org</a>
<b>American Diabetes Association</b>	<b>Disaster Relief—1-800-342-2383</b> <b>Central South Texas—1-713-977-7706</b>  <a href="http://www.diabetes.org">www.diabetes.org</a>
<b>American Heart Association</b>	<b>Houston Office—1-832-918-4000</b> <b>Customer Service—1-800-242-8721</b>  <a href="http://www.heart.org">www.heart.org</a>
<b>Houston/Harris County Area Agency on Aging</b>	<b>1-832-393-4301 / 1-800-213-8471</b> <b>Email: <a href="mailto:aging@houstontx.gov">aging@houstontx.gov</a></b>  <a href="http://www.houstontx.gov/health/Aging">www.houstontx.gov/health/Aging</a>
<b>Interfaith Ministries for Greater Houston</b>	<b>1-713-533-4900</b>  <a href="http://www.imgh.org">www.imgh.org</a>
<b>Legal Hotline for Texans</b>	<b>1-800-622-2520, Option 3</b>  <a href="http://www.tlsc.org/seniors">www.tlsc.org/seniors</a>



<b>New Lifestyles—The Source for Senior Living</b>	<b>1-800-869-9549 / 1-214-824-0022</b>  Visit <a href="http://www.newlifestyles.com">www.newlifestyles.com</a> for the contact number in your area.
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<b>Salvation Army—Houston</b>  <b>Salvation Army Family Shelter</b>  <b>Salvation Army Social Services</b>	<b>1-713-752-0677 / 1-800-725-2769</b>  <a href="http://www.salvationarmyhouston.org">www.salvationarmyhouston.org</a>
<b>Senior Guidance Program of the Houston Junior Forum</b>	<b>1-713-868-6970</b>  <a href="http://houstonjuniorforum.org">houstonjuniorforum.org</a>
<b>West University Place, City of Senior Services</b>	<b>1-713-662-5895</b>  <a href="http://www.westutx.gov/220/Senior-Services">www.westutx.gov/220/Senior-Services</a>

#### 19.4 Houston Area Helpful Numbers

Houston Area Helpful Numbers	
<b>NAACP—Houston</b>	<b>1-713-526-3389</b>  <a href="http://naacphouston.org">naacphouston.org</a>
<b>Houston City Hall</b>	<b>1-713-837-0311</b>  <a href="http://www.houstontx.gov/events/cityhall.html">www.houstontx.gov/events/cityhall.html</a>
<b>Houston Health Department</b>	<b>1-832-393-5088</b>  <a href="http://www.houstontx.gov/health">www.houstontx.gov/health</a>
<b>Houston Housing Authority</b>	<b>Customer—1-713-260-0600</b> <b>TTY (for the hearing impaired)—1-713-260-0547</b>  <a href="http://www.housingforhouston.com">www.housingforhouston.com</a>
<b>Automobile Registration (Harris County)</b>	<b>1-713-274-8000</b>

	<a href="http://www.hctax.net">www.hctax.net</a>
County Clerk (Harris County)	Clerk's Office—1-832-927-7230 Civil Courthouse—1-713-274-6390  <a href="http://www.cclerk.hctx.net">www.cclerk.hctx.net</a>
Child Support Customer Service Center	1-800-252-8014  <a href="http://www.texasattorneygeneral.gov/cs/contact-the-child-support-division">www.texasattorneygeneral.gov/cs/contact-the-child-support-division</a>
Harris County Department of Education	1-713-694-6300  <a href="http://www.hcde-texas.org">www.hcde-texas.org</a>
Harris County District Clerk	1-832-927-5800  <a href="http://www.hcdistrictclerk.com/Common/Default.aspx">www.hcdistrictclerk.com/Common/Default.aspx</a>
Harris County Information Center (Online Directory)	1-713-755-5000  <a href="http://www.ccl.hctx.net/admin/default.htm">www.ccl.hctx.net/admin/default.htm</a>
Marriage License	Personal Records Department—1-713-274-8686  <a href="http://www.cclerk.hctx.net/PersonalRecords.aspx#Mal">www.cclerk.hctx.net/PersonalRecords.aspx#Mal</a>
Probate Clerk's Office	Visit <a href="http://www.co.harris.tx.us/probate">www.co.harris.tx.us/probate</a> to determine the appropriate probate court.
Harris County Veterans Services Office	1-281-876-6600  <a href="http://www.harrisvets.com">www.harrisvets.com</a>
Texas Department of State Health Services (including mental health)	Toll Free—1-888-963-7111 Main—1-512-776-7111  <a href="http://www.dshs.texas.gov/contact-us">www.dshs.texas.gov/contact-us</a>
Texas Department of Insurance	Main—1-800-578-4677 Consumer Help Line—1-800-252-3439  <a href="http://www.tdi.texas.gov">www.tdi.texas.gov</a>
Texas Workforce Commission (Houston Office)	1-800-628-5115  <a href="http://www.twc.state.tx.us/">www.twc.state.tx.us/</a>
Texas Department of Assistive & Rehabilitative Services (DARS)—	1-855-937-2372

now with Texas Health and Human Services Commission	<a href="http://ctadvrc.org/contact-us">ctadvrc.org/contact-us</a>
Texas Department of Insurance— Division of Worker’s Compensation	1-800-252-7031, Option 1  <a href="http://www.tdi.texas.gov/wc">www.tdi.texas.gov/wc</a>
Texas Workers Compensation Health & Safety Hotline	1-800-252-7031, Option 2  <a href="http://www.tdi.texas.gov/wc/dwcccontacts.html">www.tdi.texas.gov/wc/dwcccontacts.html</a>
Texas Veterans Commission	Crisis Hotline—988, Press 1 Austin Headquarters—1-512-463-6564  <a href="http://www.tvc.texas.gov">www.tvc.texas.gov</a>
Workforce Solutions	<a href="http://www.wrksolutions.com">www.wrksolutions.com</a>
Federal Courts, Southern District of Texas	Houston Division—1-713-250-5500  <a href="http://www.txs.uscourts.gov">www.txs.uscourts.gov</a>
Municipal Courts	<a href="http://www.houstontx.gov/courts">www.houstontx.gov/courts</a>  General ticket & court information—1-713-837-0311  Administration Department—1-713-247-5479
Small Claims Courts	Visit <a href="http://www.jp.hctx.net/default.htm">www.jp.hctx.net/default.htm</a> to determine the appropriate justice of the peace court.
Jail Division Public Information Website	Non-emergency—1-713-221-6000 Incarcerated Person Information—1-713-755-5300 Information Line—1-346-286-1600  <a href="http://www.harriscountyso.org/JailInfo/Default">www.harriscountyso.org/JailInfo/Default</a>

Non-Emergency number (Harris County Sheriff)	1-713-221-6000  <a href="http://www.harriscountysos.org/ContactUs/Contact">www.harriscountysos.org/ContactUs/Contact</a>
Jury Summons Information for Harris County	1-713-221-6000 / 1-713-755-6392 (after 10 A.M.)  <a href="http://www.hcdistrictclerk.com/common/juror/Secure/jurorsearch.aspx">www.hcdistrictclerk.com/common/juror/Secure/jurorsearch.aspx</a>
Texas Department of Criminal Justice	Austin—1-512-463-9988  Visit <a href="http://www.tdcj.state.tx.us">www.tdcj.state.tx.us</a> to determine the appropriate division.
Harris County Community Supervision & Corrections Department	1-713-755-2700  <a href="http://cscd.harriscountytexas.gov">cscd.harriscountytexas.gov</a>
Traffic Ticket Info/Municipal Courts	1-713-837-0311  Ticket information— <a href="http://www.houstontexas.gov/courts/ticket_information.html">www.houstontexas.gov/courts/ticket_information.html</a>  Traffic cases— <a href="http://www.jp.hctx.net/traffic">www.jp.hctx.net/traffic</a>
Bankruptcy Court, Southern District of Texas	1-713-250-5500  <a href="http://www.txscourts.gov/offices/houston-division">www.txscourts.gov/offices/houston-division</a>
Better Business Bureau (Houston)	1-713-868-9500  <a href="http://www.bbb.org/houston">www.bbb.org/houston</a>
Texas Department of Insurance Consumer Help Line	1-800-252-3439  <a href="http://www.tdi.texas.gov/pubs/consumer/cb022.html">www.tdi.texas.gov/pubs/consumer/cb022.html</a>
National Association of the Remodeling Industry	1-847-298-9200  <a href="http://www.nari.org">www.nari.org</a>
U.S. Consumer Product Safety Commission/Bilingual	1-800-638-2772  <a href="http://www.cpsc.gov">www.cpsc.gov</a>
Emergency and Crisis Intervention Services	

<b>Crime Stoppers</b>	<b>1-713-222-TIPS (8477)</b>  <a href="http://www.crime-stoppers.org">www.crime-stoppers.org</a>
<b>Additional Assistance</b>	
<b>Certified Public Accountant Referral (Houston CPA Society)</b>	<b>1-713-622-7733</b>  <a href="http://www.houstoncpa.org/homepage">www.houstoncpa.org/homepage</a>
<b>Chamber of Commerce, Greater Houston Partnership</b>	<b>1-713-844-3600</b> <a href="mailto:contact@houston.org">contact@houston.org</a>  <a href="http://www.houston.org">www.houston.org</a>
<b>City of Houston</b>	Check <a href="http://www.houstontx.gov">www.houstontx.gov</a> for updated information on storm clean up and dial 3-1-1 with questions.
<b>Greater Houston Fair Housing Center—Bilingual Intake for housing discrimination matter</b>	<b>1-713-641-3247</b>  <a href="http://greaterhoustonfairhousingcenter.cfsites.org/index.php">greaterhoustonfairhousingcenter.cfsites.org/index.php</a>
<b>Harris County</b>	<b>Office—1-832-927-8200</b> <b>Disaster Recovery Hotline—1-832-927-8301</b>  Check <a href="http://harrisrecovery.org">harrisrecovery.org</a> for the latest information.
<b>Harris County Medical Society</b>	<b>1-713-524-4267</b>  <a href="http://www.hcms.org/tmaimis">www.hcms.org/tmaimis</a>
<b>Houston Apartment Association</b>	<b>1-713-595-0300</b>  <a href="http://www.haaonline.org">www.haaonline.org</a>
<b>Houston Association of Realtors</b>	<b>HAR Central Office—1-713-629-1900</b> <b>Legal Support Hotline—1-800-873-9155</b> <b>SUPRA Support—1-877-699-6787</b> <b>Matris MLS—1-877-805-7301</b>  <a href="http://www.har.com">www.har.com</a>

<b>Univision, KXLN-TV Spanish News Station</b>	<b>1-713-965-2600</b> <a href="http://www.univision.com">www.univision.com</a>
<b>Library Public Houston (General)</b>	<b>Central Library, Jesse H. Jones Building—1-832-393-1313</b> <a href="http://houstonlibrary.org">houstonlibrary.org</a>
<b>Harris County Law Library</b>	<b>1-713-755-5183</b> <a href="http://www.harriscountylawlibrary.org">www.harriscountylawlibrary.org</a>
<b>Federal Public Defenders</b>	<b>Houston Office—1-713-718-4600</b> <a href="http://www.fpdspot.org/en">www.fpdspot.org/en</a>
<b>Copies of State &amp; Federal Laws</b>	<b>Texas State Law Library:</b> <a href="http://www.sll.texas.gov">www.sll.texas.gov</a> <b>1-512-463-1722 / 1-844-829-2843</b>  <b>Texas Legislature Online</b> <a href="http://www.capitol.state.tx.us">www.capitol.state.tx.us</a>
<b>Harris County Tax Assessor &amp; Collector</b>	<b>1-713-274-8000</b> <a href="http://www.hctax.net">www.hctax.net</a>
<b>Solid Waste Management Department</b>	<b>Solid Waste Management is responsible for storm debris collection in the city of Houston.</b> <a href="http://www.houstontx.gov/solidwaste">www.houstontx.gov/solidwaste</a>  <b>Or call 3-1-1 for debris drop-off locations and pick-up information. For instructions on separating your debris for removal, see:</b> <a href="http://www.houstontx.gov/solidwaste/debris_08302017.html">www.houstontx.gov/solidwaste/debris_08302017.html</a> .

## 19.5 Beaumont Area Helpful Numbers

Beaumont Area Helpful Numbers	
American Red Cross (Beaumont Chapter)	<p>1-409-833-2322</p> <p><a href="http://www.redcross.org/local/texas/gulf-coast/about-us/locations/southeast-deep-east.html">www.redcross.org/local/texas/gulf-coast/about-us/locations/southeast-deep-east.html</a></p>
Buckner Children & Family Services	<p>1-214-758-8023</p> <p><a href="http://buckner.org">buckner.org</a></p>
Catholic Charities	<p>1-409-924-4400</p> <p><a href="http://www.catholiccharitiesbmt.org">www.catholiccharitiesbmt.org</a></p>
Communities In Schools, Southeast Texas, Inc.	<p>1-409-951-1810</p> <p><a href="http://cisset.org">cisset.org</a></p>
Family Services of Southeast Texas	<p>Main Office—1-409-833-2668</p> <p>24-Hour Domestic Violence &amp; Sexual Assault Hotline—1-409-832-7575 / 1-800-621-8882</p> <p><a href="http://www.westrengthenfamilies.org">www.westrengthenfamilies.org</a></p>
Goodwill Industries of Southeast Texas, Inc.	<p>1-409-838-9911</p> <p><a href="http://www.goodwilltxla.org">www.goodwilltxla.org</a></p>
Nutrition & Services for Seniors—Meals on Wheels of Jefferson and Hardin Counties	<p>1-409-892-4455</p> <p><a href="http://seniormeals.org">seniormeals.org</a></p>
Some Other Place	<p>1-409-832-7976</p> <p><a href="http://www.someotherplacebeaumont.com">www.someotherplacebeaumont.com</a></p>
The Salvation Army of Beaumont	<p>1-409-896-2361</p> <p><a href="http://www.salvationarmytexas.org">www.salvationarmytexas.org</a></p>
United Way of Beaumont and North Jefferson County	<p>1-409-835-4575</p> <p><a href="http://www.uwbmt.org">www.uwbmt.org</a></p>

<b>Beaumont Convention &amp; Visitors Bureau</b>	<b>1-409-880-3749</b>  <a href="http://www.beaumontcvb.com">www.beaumontcvb.com</a>
<b>SE Texas Food Bank</b>	<b>1-409-839-8777</b>  <a href="http://setxfoodbank.org">setxfoodbank.org</a>
<b>Blood and Plasma Research, Inc.</b>	<b>1-409-835-7268</b>  <a href="http://bloodandplasma.com">bloodandplasma.com</a>
<b>LifeShare Blood Centers</b>	<b>to donate—1-800-256-5433</b> <b>donor hotline—1-800-259-7233</b>  <a href="http://www.lifeshare.org">www.lifeshare.org</a>