



**South
Carolina
Bar**

Disaster Legal Services Quick-Reference Guide

Presented by the YLD Disaster Legal Services Committee



South Carolina Bar

Young Lawyers Division

October 17, 2016

Dear South Carolina Young Lawyers:

As many of you know, our state experienced record-breaking flooding with the "1000 Year Flood" in October 2015. Until this time, there had been no major flooding disasters in South Carolina since Tropical Storm Frances in 2004. In an effort to help our neighbors and friends who were severely affected by this flooding, the SC Bar YLD hosted a disaster legal services hotline in conjunction with FEMA and the American Bar Association Young Lawyers Division. This hotline, running for three months, took in calls from several hundred South Carolinians. With the help of young lawyer volunteers like you, we were able to provide free legal assistance for disaster-related issues to hundreds of our neighbors and friends across the state.

In an effort to further support the generous efforts of South Carolina's young lawyers in times of crisis, the YLD Disaster Legal Services Committee has created this Quick-Reference Guide to assist young lawyers who agree to handle pro bono cases in times of disaster. Like cases we handle in the every day practice of law, each disaster-related case is unique and may have varying facts and issues. It is our hope that this Guide will act as both a reference and starting point for questions that may arise in your handling of pro bono disaster cases.

Thank you again for your service to both the South Carolina Bar and the citizens of South Carolina!

Sincerely,

YLD Disaster Legal Services Committee

Special thanks to the 2016-2017 YLD Disaster
Legal Services Committee Members for their
contributions to this Quick Reference Guide.

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DLS Fact Sheet

What is DLS?¹

The Disaster Legal Services (DLS) program provides free legal assistance to persons affected by presidentially declared major disasters. DLS is a federal disaster assistance program operated by the American Bar Association Young Lawyers Division (ABA YLD) pursuant to a memorandum of understanding with FEMA. DLS delivers free legal services on legal matters that arise directly from major disasters.

What triggers DLS?

Upon request of a state governor, the President may make a declaration of major disaster for a state. The declaration will define the areas of the state affected by the disaster as well as the types of federal assistance available to individuals affected by the disaster.

Types of Major Disaster Declarations:

-Public Assistance: Provides assistance to state and local governments and certain private non-profits for emergency work and the repair and replacement of disaster damaged facilities.

-Hazard Mitigation Grant Program: Provides assistance to state and local governments and some private non-profits for actions taken to prevent or reduce long term risk to life and property.

-Individual Assistance: Provides assistance to individuals including temporary housing, repair assistance and other programs such as DLS.

Together, FEMA and representatives of the American Bar Association will evaluate a need for DLS. Once FEMA determines DLS is needed, FEMA will contact the American Bar Association's Young Lawyers Division to implement the DLS program.

Who is eligible for DLS?

DLS is provided to "low-income" disaster survivors. "Low income" individuals are those disaster victims who have insufficient resources to secure adequate legal services, whether the insufficiency existed prior to or results from the major disaster.

¹ The information contained in this section was primarily obtained from the 2016 ABA YLD Disaster Legal Services Training Manual.

What type of legal matters can young lawyers help with?

The DLS program can provide legal assistance on almost any legal issue that arises from a presidentially declared major disaster, including: bankruptcy, civil rights, employment law, family law, FEMA benefits claims, insurance law, landlord-tenant law, real estate law, wills, trusts and probate matters. Legal help in any area of law is only available if the legal issue is directly related to a declared major disaster.

Fee-generating cases are not accepted under the DLS program. If you are assigned a case that you later determine to be fee-generating, please direct your client to the S.C. Bar Lawyer Referral Service.²

How is the DLS hotline implemented in South Carolina?

When FEMA and the ABA YLD determine that DLS is needed, the ABA will partner with the SC Bar YLD and others to set up a toll-free hotline to give individuals impacted by a disaster a direct connection to free legal assistance. All calls made to the DLS hotline will be forwarded to young lawyers who can provide over-the-phone assistance. If needed, callers will be referred to attorneys who will provide legal representation free of charge.

In some disasters, volunteer attorneys will staff FEMA Disaster Recovery Centers (DRCs) allowing individuals to meet with an attorney in person.

There may be instances in which the SC Bar, seeing a need, will implement the DLS hotline without a DLS determination by FEMA and the ABA YLD.

What is the role of the attorney volunteer?

Young lawyer volunteers have the same obligations and level of responsibility as they have with a paying client.

- Duty of Confidentiality
- Duty of Diligence
- Competent and Professional Representation

² For more information on the South Carolina Bar Lawyer Referral Service call (803) 799-6653.

The FEMA Application Process

FEMA's Mission

"To support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards."

FEMA's Authority to Act

FEMA has authority to provide free legal services to low-income survivors of major disasters pursuant to 42 U.S.C. § 582 (The Robert T. Stafford Disaster Relief and Emergency Assistance Act) and 44 CFR 206.164.

FEMA Disaster Grant Application Process

In order to receive aid from FEMA, you must **qualify** and **register**. Below is a step-by-step guide to the FEMA assistance registration process:

1. Determine if the client qualifies for a FEMA Disaster Grant.

There are two main types of relief offered by FEMA in the time of disaster:

- FEMA Disaster Grant
- Small Business Administration (SBA) Loan

The majority of residents will be applying for a FEMA Disaster Grant because there is no obligation to pay it back. The SBA Loan, which is available to both individuals and businesses, must be paid back with interest.

Once a disaster is declared, FEMA will designate affected counties to receive federal assistance. It is important to first determine whether the county where the individual resides or where the property is located has been cleared to receive FEMA assistance. These counties are generally listed on the FEMA disaster declaration or announced via local media outlets.

2. Determine if the damages sought by the client are covered by FEMA.

A common question that you will face handling FEMA related questions from the DLS hotline is what type of damages are recoverable under FEMA grants. It is best to determine the nature of the client's damages prior to registering for FEMA assistance.

Relief can be given for the following disaster-related damages:

- Rental payments for temporary housing (possibly hotel stays)

-Costs for home repair and replacement of essential household items to make damaged dwellings safe, sanitary and functional; clothing; tools required for one's job; necessary education materials; clean-up items; and essential vehicles (See caveat in paragraph below regarding recovery for vehicle loss.)

-Cost of medical, dental, funeral and transportation needs

-Cost of crisis counseling for those traumatized by the disaster, income tax assistance for filing casualty losses, and advisory assistance for legal, veterans' benefits and social security matters

-Moving and storage expenses related to the disaster (includes moving and storing property to avoid additional disaster damage while disaster-related repairs are being made)

-Disaster-related child care expenses

-Cost for primary heat source fuel

-Low-interest loans to cover residential losses not fully compensated by insurance (via the SBA Loan Program)

-Small business and non-profit organization loans up to \$2 million dollars (via the SBA Loan Program)

The monetary limit for FEMA Disaster Grants is \$33,000. The monetary limit for loans obtained via the Small Business Administration (SBA) is \$200,000.

Automobile insurance and the SBA Loan are the two primary resources available to a disaster survivor in the event a motor vehicle is damaged during a disaster. While automobile repairs and replacement are not generally covered by the FEMA Disaster Grant, FEMA may be able to assist with the cost of repair and/or replacement of the vehicle when insurance and SBA Loans are not applicable. For more information on automobile related claims visit: <https://www.fema.gov/faq-details/Assistance-with-vehicle-repairs-replacement-1370032124288/>.

3. Obtain the following information from the client before registering them for FEMA assistance.

-Social Security Number

-Address of the location where the damage occurred (pre-disaster address)

-Current address and telephone number (Among the top five reasons applicants fail to receive assistance grants is FEMA's inability to contact them after they apply. Be sure the client understands the importance of notifying FEMA of any change in address or phone number.)

-Insurance information (Be sure the client contacts his/her insurance agent before registering with FEMA. When registering, the client will need to provide the name of the agent, policy number, policy type and policy coverage amounts.)

-Total household annual income

-Routing and account number for a checking or savings account for transfer of disaster assistance funds (Direct Deposit expedites the FEMA check payment process substantially.)

-A description of the disaster-caused damages and losses

-A signed and notarized authorization form, authorizing FEMA to communicate with you as the applicant's attorney (If authorized, you can check the status of your client's claim online or by phone. This form will require all the information listed above as well as the client's city of birth.)

4. Register for FEMA assistance on behalf of your client.

There are three ways to register your client's FEMA assistance claim:

-Register by phone at: (800) 621-3362 / TTY (800) 462-7585

-Register online at: <https://www.disasterassistance.gov/>

-Register by visiting a FEMA Disaster Recovery Center. Locate the closest center by visiting: <https://asd.fema.gov/inter/locator/home.htm>

Be sure to register your client for relief within the applicable registration deadline. Registration deadlines are disaster specific and may be extended as the deadline approaches. Check the FEMA website or local media outlets to determine the deadline for the applicable South Carolina disaster declaration.

Once the client's FEMA registration is complete, you will be given an application number that can be used to check the status of the client's FEMA assistance claim.

5. Await FEMA inspection.

Following registration, a FEMA-contracted inspector will call to set up a date and time for a property inspection. If possible, be present at the client's home during the inspection. If you are unable to attend the inspection, advise your client to be honest and thorough with the inspector. Advise the client to bring to the inspector's attention any and all disaster related damages to their property.

There is no charge for inspections. Inspections are a necessary step to determine damages. Review with your client the inspections process and what information will be collected from them by the inspector. If an inspection is not scheduled within a few weeks of registration, contact FEMA.

Homeowners must show the inspector proof of ownership and residency such as a tax bill, deed, mortgage payment receipt, utility bill or other document confirming the home was their primary residence at the time of the disaster. It is also helpful for the homeowner to have their homeowner's insurance documents available for review. Renters will need to provide proof of occupancy.

Both homeowners and renters will be asked to sign a document saying that they or someone in their household was a U.S. citizen, non-citizen national or qualified alien at the time of the disaster. The applicant will then need to present a form of photo identification.

FEMA inspectors will record structural and personal property damage. Inspectors do not make decisions about eligibility or assistance, but simply verify and document damage, then forward the report to FEMA.

Applicants can check the status of their claims via phone or online.

6. The FEMA claim is accepted or denied.

Within 10 days of the inspection, the applicant will receive a letter from FEMA either denying or accepting the claim. A denial letter will explain why the client's request for assistance was denied and how to appeal. If it has been determined by FEMA that the client is eligible for assistance, FEMA will issue payment in the amount determined to the applicant.

The FEMA Appeals Process³

Applicants can appeal any FEMA decision. An appeal of a denial of FEMA assistance must be made in writing and sent by mail or fax within 60 days of the date on the determination letter they received.

Effective Letters of Appeal should include the following information:

-In the first paragraph, list the applicant's full legal name used on the aid application, Social Security number and FEMA case number. Include a personal phone number as well as a back-up phone number where you or the applicant can be reached, in addition to a correct mailing address.

-Write an explanation of events that provides evidence to support the appeal. Summarize changes in circumstances or needs, additional damage to property discovered after the registration was filed or higher-than-anticipated costs for repairs.

³ For more information on the FEMA appeals process, visit: <https://www.fema.gov/blog/2012-11-09/appealing-fema-assistance-denial-decision> and <https://www.fema.gov/news-release/2016/05/04/how-appeal-fema-decision>.

-Include photocopies of receipts for materials and labor as well as up to three written bids for repair work if those costs exceed the award amount. Submitting repair estimates, receipts, statements or invoices is recommended.

Letters of Appeal should be sent to:

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

Appeals may also be faxed to: 1-800-827-8112.

Keep a copy of the appeal letter and supporting documentation as a record. One helpful resource for lawyers appealing FEMA denials is FEMA's Public Assistance Appeals Database. This database contains FEMA responses to appeals. Reviewing previous appeal responses will allow you to tailor your client's Letter of Appeal to FEMA's basis for denial and help preempt a denial of the appeal. Visit <https://www.fema.gov/appeals>.

Disaster-Related Online Resources for Lawyers

National Disaster Legal Aid Resource Center

<https://www.disasterlegalaid.org/>

This website is a centralized online resource for disaster-related legal content. The goal of this website is to serve as a centralized resource for legal aid and pro bono attorneys across the country on legal issues related to all types of disasters. Resources on this website include disaster manuals and presentations for lawyers, more information about FEMA's disaster legal services program, and information related to flood insurance claims.

National Flood Insurance Program

<https://www.floodsmart.gov/floodsmart/>

This website explains the steps necessary to file a commercial or residential flood insurance claim and includes a feature that helps individuals find flood insurance agents in their areas.

FEMA Individual Assistance Fact Sheets

<https://www.fema.gov/media-library/resources-documents/collections/382>

This website contains FEMA Fact Sheets to assist people who may need assistance during a disaster. These one-page handouts contain helpful information that can easily be distributed to clients. The Fact Sheets cover a wide range of topics including disaster unemployment assistance, crisis counseling assistance and funeral assistance.

Lone Star Legal Aid Insurance Claim Tips Sheet

<http://www.lonestarlegal.org/0515Flood/Insurance%20Steps%20ENG.pdf>

Lone Star Legal Aid is a nonprofit law firm serving low-income and underserved populations in Texas. This webpage outlines a helpful step-by-step process for filing a disaster-related claim with an insurance company.

Help After a Disaster: Applicant's Guide to the Individuals & Households Program

https://www.fema.gov/pdf/assistance/process/help_after_disaster_english.pdf

This webpage links to an extensive document outlining the FEMA application process from registration to appeal. This document contains useful information about the type of assistance provided, program eligibility, eligible losses, case review on appeal, and frequently asked questions and answers.