Pro Bono Training Online, On Your Time.
Assisting Homeowners after a Disaster

Presented by: Lisa Sitkin
National Housing Law Project
After this learning experience, trainees will:

1. Have a better understanding of the issues homeowners may face after a disaster.

2. Have tools to assist homeowners after a disaster with respect to mortgages, property taxes, and repairs & rebuilding.
• Overview of non-judicial foreclosure process
• Foreclosure prevention tools and options
• Mortgage relief after a disaster
• Property tax adjustments and deferrals
• Repairs and rebuilding
Overview of Non-Judicial Foreclosure Process
California Non-judicial Foreclosure Timeline

1. Homeowner becomes delinquent
2. 120 days (federal)
3. Notice of Default Recorded and Sent
4. 90 Days
5. Notice of Trustee’s Sale Recorded and Posted
6. 20 Days
7. Trustee’s Sale Home Auctioned to Highest Bidder
Foreclosure Prevention
Tools and Options
Foreclosure Prevention Tools and Options

- **Moratorium**
  - Temporary pause on foreclosure activity

- **Forbearance**
  - Temporary pause in payments

- **Loan modification (Disaster-Specific or Standard)**
  - Modify terms of the loan (interest rate, years left, loan balance) to bring it current and possibly reduce monthly payment
# Foreclosure Prevention Tools and Options

<table>
<thead>
<tr>
<th>Tool</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Reinstatement</strong></td>
<td>Repay all arrears in one lump sum</td>
</tr>
<tr>
<td><strong>Repayment plan</strong></td>
<td>Repay all arrears over a set period (usually 3-12 months)</td>
</tr>
<tr>
<td><strong>Payoff</strong></td>
<td>Payoff (possibly using insurance proceeds) = pay all amounts due (arrears + remaining loan balance)</td>
</tr>
<tr>
<td><strong>Refinance</strong></td>
<td>Use a new loan to pay off all amounts due on current loan</td>
</tr>
</tbody>
</table>
Foreclosure Prevention Tools and Options

Bankruptcy

• Allows for a temporary pause (called a “stay”) to work out a repayment plan or loan modification

Court action (lawsuit)

• May result in a victory or settlement.
Foreclosure Prevention Tools and Options

Leave the home before Foreclosure

- Regular sale if the house is worth more than homeowner owes
- Short sale if the house is worth less than homeowner owes
- Deed-in-lieu – sign over title to the lender
Mortgage Relief After a Disaster
Foreclosure Moratorium Information

• Relief for affected homeowners who were already in default before the disaster is generally 90 days from end date of disaster.
  • Can be extended
• Different from the types of relief available for affected homeowners who go into default post-disaster
• Exact details vary by servicer, lender and/or the person or agency that owns, insures or guarantees the loan
The Loss Mitigation Process – What to Figure Out

- Who is the mortgage servicer?
- What type of loan does your client have?
  - Fannie Mae
  - Freddie Mac
  - Fed Housing Admin (FHA)
  - Veterans Admin (VA)
  - Rural Housing Svc (RHS/RD)
  - Small Biz Admin (SBA)
  - Reverse mortgage
  - Privately owned by servicer or other investor
Early and regular communication with mortgage servicer is CRITICAL
The Loss Mitigation Process – What To Do

1. Request copies of mortgage documents as needed
2. Notify servicer of the homeowner’s situation as a result of the disaster
3. Provide 3rd party authorization as needed
4. Provide updated contact information for the homeowner if relocated
5. Request copies of mortgage documents as needed
The Loss Mitigation Process – What To Do

Find out what options are available and what steps need to be taken

Initiate a request for relief

Respond to additional servicer requests for information or documents

Monitor servicer’s activity on the request before and after approval
Property Tax Adjustments and Deferrals
• When a “calamity” causes damage of at least $10,000 to a property, a homeowner can apply for:
  • Adjustment of assessed value – must file request w/in 12 months
  • Deferral of payment of property tax bill due immediately following the disaster (must request before the tax bill due date; does not apply if escrowed for taxes)
• Forms, procedures and more info available through each county’s assessor’s office.
Repairs and Rebuilding
Repairs and Rebuilding

- Resources include:
  - Homeowner’s insurance policy
  - FEMA assistance
  - SBA loans
  - State/local assistance
• Insurance – disbursement and use of proceeds
  • Insurer will issue check listing both borrower and lender/servicer as payee
  • Standards – economic feasibility and preservation of the security
  • Different rules for defaulted loans
Avoiding Scams

Consumer Tips:

• National Consumer Law Center resources
• Federal Trade Commission – Consumer Information

Fake offers of state or federal aid:

• Requests for fees or deposits
• Requests for SSN or other personal or financial info

Unlicensed or inexperienced public adjusters
Avoiding Scams

Phony building inspectors

- No ID badge
- Doesn’t know your FEMA ID number
- Requests banking or other $$ info

Unlicensed, uninsured or otherwise unqualified contractors

- Cash deposits
- Deductible assistance offers
Avoiding Scams

Other red flags

• Door-to-door solicitations and “hard sells”
• Non-local service providers
• No written contract

Be aware of right-to-cancel and anti-gouging laws when hiring contractors and reviewing pricing and estimates
• National Consumer Law Center – www.nclc.org
  • “Obtaining Mortgage Relief for Victims of Disasters: A Practice Guide for Advocates”
  • “Foreclosures and Mortgage Servicing”

• Continuing Education of the Bar – www.ceb.com
  • “California Mortgages, Deeds of Trust, and Foreclosure Litigation” practice guide

• Consumer Financial Protection Bureau – www.consumerfinance.gov
  • Section on mortgages
• CA Homeowner Bill of Rights (HBOR)
• Federal mortgage servicing regulations
  • Real Estate Settlement and Procedures Act (RESPA)
  • Truth in Lending Act (TILA)
• Further guidance
  • CFPB website: www.consumerfinance.gov
  • CFPB compliance guide (April 2018)
Thank you for joining us

Have a nice day!
Pro Bono Training Online, On Your Time.
Best Practices for Assisting Disaster-Impacted Clients with Insurance Matters – Part 1

Presented by:
Amy Bach, Esq
United Policyholders
United Policyholders (UP)

- Reputable, established 501(c)3 not-for-profit charitable organization, Platinum Guide Star rating
- A trusted information resource and respected voice for insurance consumers in all 50 states
- 30 year track record and expertise in disaster recovery
- Not for profit…not for sale
- Funded by donations and grants

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Professional staff

Government and nonprofit partners

Volunteers

• Survivor to Survivor - previous catastrophic loss survivors paying it forward
• Consumer oriented professionals
  • Damage and repair/rebuild cost estimators
  • Lawyers
  • Public Adjusters
• Tax and Financial Planning experts
• Construction and Real Estate professionals
After this learning experience, trainees will:

- Be familiar with the legal, insurance and personal finance issues that disaster-impacted clients typically seek assistance with.

- Be familiar with insurance contract, regulatory and law basics.
• Basics
• Analyzing Policy Forms
• Common Coverage/Claim Issues
Obtaining and Analyzing Client Policies

- Endorsements, coverage extensions, limits, exclusions, deductible application

Setting Reasonable Expectations

- Attorney as claim adjuster
- Consultations vs. representing clients
- Knowing your limits
The Basics

The Claim Adjustment Process

Meeting Client Needs

- Common legal issues
- Loss valuation challenges
- Expert costs/proof of loss challenges

The Duty of Cooperation
Recorded Statements/Examinations under oath/Appraisal

Referrals to DOIs, experts, public adjusters, private attorneys

Filing suit against an insurance company, agent or broker
Analyzing Policy Forms
# Home Insurance Policy Forms: Coverage

## SAMPLE HOMEOWNER POLICY DECLARATION PAGE

**Policy Period:** 03/10/2007 to 03/10/2008 12:01 AM Local Time

<table>
<thead>
<tr>
<th>NAME AND MAILING ADDRESS OF INSURED</th>
<th>AGENT NAME AND ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A</strong> DWELLING</td>
<td><strong>E</strong> PERSONAL LIABILITY</td>
</tr>
<tr>
<td><strong>B</strong> SEPARATE STRUCTURES</td>
<td><strong>F</strong> MEDICAL PAYMENTS TO OTHERS</td>
</tr>
<tr>
<td><strong>C</strong> PERSONAL PROPERTY</td>
<td>$XXX,XXX</td>
</tr>
<tr>
<td><strong>D</strong> LOSS OF USE</td>
<td>$X,XXX</td>
</tr>
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</table>

- **Loss Deductible for Section 1:** $1,000
- **Earthquake Deductible:** See Message Below

<table>
<thead>
<tr>
<th>COVERAGE FORMS</th>
<th>FORM NUMBERS</th>
<th>PREMIUMS</th>
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</thead>
<tbody>
<tr>
<td>Special Form – Homeowners Policy</td>
<td>WG HO 300 (7/91)</td>
<td>$x,xxx</td>
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<tr>
<td>Replacement Cost Composite</td>
<td>WG HO 301 (7/91)</td>
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<tr>
<td>Increased Limit for Coverage E &amp; F</td>
<td>Section II</td>
<td>Incl.</td>
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<td>Mold, Fungus, Wet Rot, Dry Rot, or Bacteria</td>
<td>WG HO 303 (05/02)</td>
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<td>Mortgage Payment Supplement</td>
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<tr>
<td>Lender’s Loss Payment Endorsement</td>
<td>4388FU NS (5/42)</td>
<td></td>
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</tbody>
</table>

**Important:** Earthquake Coverage is Not Included – Contact Your Agent For Further Information.

The Policy Does Not Include Building Code Upgrade Coverage.

Extended Replacement Cost Coverage Does Not Exceed 200% of Limit “A” – Dwelling.

Coverage Includes Personal Property Replacement Cost.

---

Check out: “UP’s Guide to your Declarations Page”

Link in Resources

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Understanding a Home Insurance Policy

Declarations page plus policy wording = max available benefits

---

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Description</th>
<th>Premium</th>
<th>Coverage</th>
<th>Description</th>
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</tbody>
</table>

**TOTAL PREMIUM:** $1,255.00

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AMCO INSURANCE COMPANY
50391-1100

AGENCY INSURANCE SVCS CA

CONTINUATION DECLARATIONS
The limit of liability for the structure (Coverage A) is based on the estimate of the cost to rebuild your home, including an approximate cost for labor and materials in your area, and specific information that you have provided about your home.

NAME INSURED AND ADDRESS
HOMEOWNER, JOE
1234 CREEK ROAD
ANYTOWN, CA 23456
Not all declarations pages look the same
Understanding a Home Insurance Policy

- Should set forth:
  - Name of Insured
  - Location of insured property
  - Policy period
  - Major coverages and limits of liability
  - Endorsement/Riders
  - Deductible(s)
  - Lender information
  - Additional insureds

<table>
<thead>
<tr>
<th>COVERAGE</th>
<th>DESCRIPTION</th>
<th>PREMIUM</th>
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<tbody>
<tr>
<td>HO90 05/02</td>
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<td>12259 02/07</td>
<td>Prem Alarm Prot</td>
<td>12/01</td>
</tr>
<tr>
<td>HO216 01/00</td>
<td>Per Prop Repl</td>
<td>01/00</td>
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<td>43882FUN 06/42</td>
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<td>1258P 02/07</td>
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<tr>
<td>IN2004 03/04</td>
<td>Consumer Info</td>
<td>11796 07/11</td>
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<tr>
<td>IN2499 10/08</td>
<td>Important Notice</td>
<td>10840 07/89</td>
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<td>IN0100 01/10</td>
<td>Important Notice</td>
<td>IN2264 03/06</td>
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<td>IN2709 12/15</td>
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<td>IN0000 04/09</td>
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<tr>
<td>IN2722 02/17</td>
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<td>HO300CA 10/14</td>
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</table>

**TOTAL PREMIUM** 1,155.00
Example:

Dwelling 100% = $100,000
Extended $25,000
Dwelling Debris $5,000
Trees & Shrubs $5,000
Pollution, etc. TBD
Other Structures $12,500
Contents $80,000
>$227,500
• Endorsements, coverage extensions
• Limits/Exclusions
• Deductibles
• ACV vs. RCV
  • Recoverable/non recoverable depreciation
• Advances
• Time limits
  • ALE, collecting RCV, Rebuilding, Replacing
Extended Replacement (ERC) & Code Upgrade Coverage

How to tell if there is an ERC:

- Yes
- Maybe
- No Idea
11. Building Code Upgrade Coverage

a. You may use up to 25% of the limit of liability that applies to Coverage A, excluding any increase in the Coverage A limit of liability contained in the HO-28 Limited Home Replacement Cost Endorsement, for the increased costs you incur due to the enforcement of any ordinance or law which requires or regulates:

Any reimbursement we make under this additional coverage is subject to and included in the limit of liability stated in the Declarations and does not increase that limit.
When ACV with RC Payment

ACV with RC paid when repairs completed – Most common

5. **How We Settle Covered Loss.**

Covered accidental direct physical loss or damage will be settled as follows.

a. **Coverage A (Dwelling) and Coverage B (Separate Structures).** We will only settle covered loss or damage on the basis of use as a private residence.

1. Settlement for covered loss or damage to a specific component part(s) of the dwelling or separate structures, except for roof materials and fences, will be settled at reasonable and necessary replacement cost, without deduction for depreciation, for the lesser of the costs to repair or to replace the specific damaged component part(s), but for no more than the lesser of the following:
   i. the applicable stated limit or other limit of insurance in this policy that applies to the damaged or destroyed dwelling or separate structure(s);
   ii. the reasonable repair or replacement cost of that specific component part(s) damaged for equivalent construction with materials of like kind and quality on the residence premises, determined as of the time of loss or damage;
   iii. the reasonable and necessary amount actually spent to repair or replace the specifically damaged component part(s) of the dwelling or separate structure(s); or
   iv. the loss to the interest of the insured in the property.

When the cost to repair or replace damaged property is more than $2,500, we will pay no more than the actual cash value of the damaged specific component part(s) of property until actual repair or replacement is completed. If the damage to the dwelling should be a total loss, then the actual cash value payment will be no more than the lesser of the stated limit or the fair market value of the dwelling until actual repair or replacement of the dwelling is completed.

If the dwelling or a separate structure is rebuilt or replaced at a different location, the costs described in subsection ii. above are limited to the costs which would have been incurred if the dwelling or separate structure had been rebuilt or replaced at its location on the residence premises.
Common Coverage & Claim Issues
Coverage Issues

Dwelling underinsured:

- Insurance procured when home was purchased, annual increases not adequate
- Agent/insurer underestimated dwelling replacement value at point of sale
- PSF construction pricing is high in CA, plus post-disaster demand surge
- Client or agent lowballed dwelling valuation to keep premium down
Common Coverage Issues

Betterment not covered unless Building Code/Ordinance Compliance endorsement included (now required by CA law starting in 2021)

The application of depreciation, recoverable and not-recoverable, Actual Cash Value vs. Replacement value

- “Replacement cost value” (RCV)
- “Actual cash value” (ACV)
Inadequate Additional Living Expense (ALE)/ Loss of Use coverage (CA law requires 36 mos of payable benefits but doesn’t specify $ amount)

Inadequate coverage for Landscaping, Trees, Shrubs
We’re proud to offer the following guidance to help you keep moving forward on your road to recovery:

**Overcoming Obstacles:**
- Deadlines and Decisions: 2nd Anniversary Bulletin for 2017 North Bay Wildfire Survivors
- Tips and Sample Letter Asking for ALE/Loss of Use Benefits to be Extended
- A Guide to Your Insurance Legal Rights
- FAQs about Home Insurance Claims in California
- Insurance claim rules in California - English
- Insurance claim rules in California - Spanish
- The Find Help Directory (professionals that support UP)
- Debris Removal Decisions for 2017 North Bay Wildfire Survivors
- The “scoop” on “scope of loss’
- Getting Your Mortgage Company To Release Insurance Proceeds
- Tips on hiring a contractor
- Updating Your Home Insurance After a Loss

Sample Letter Available at UP’s website linked on the resource page.

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**Sample Letter Requesting Extension of Additional Living Expense/Loss of Use Coverage Deadlines**

**NOTE:** The sample letter below must be customized to the facts of your individual situation and claim. All portions that are in parentheses and/or underlined must be completed or revised and anything in italics should be removed before you send it.

(Date)
(Name of adjuster or highest ranking ins. co. employee)
(Name of Insurance Co.)
(Address)

Re:

Claim Number: __________
Date of Loss: __________
Name of insured: __________
Address of Insured Property: __________

Dear __________,

We are continuing to do our best to document our loss and cooperate with your company to reach a fair and full settlement. We are writing to request an extension of our ALE/Loss of Use benefits.

Please extend our ALE/Loss of Use Benefits from two years to __________ (fill in the amount of time that you think it will reasonably take you to complete repair/replacement).

We need additional time to rebuild and need an extension of our ALE/Loss of Use benefits to do so. (You can add in whatever facts support your request that you have moved the rebuild along as fast as possible, yet need additional time).

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Claim Issues

- Errors in issuance of policy, named insured
- Communication delays and frustration
- Overloaded, rotating, adversarial adjusters
- Misinformation re: policy benefits/requirements
- Slow pay, low pay
Claim Issues

• Contents inventory = torture
• Excessive or improper depreciation
• Rigid enforcement of unrealistic deadlines
  • Submission of Contents Inventory, Collecting RCV, ALE funds, Repairs/Rebuild
Claim Issues

- Contents inventory = torture
- Excessive or improper depreciation
- Rigid enforcement of unrealistic deadlines
  - Submission of Contents Inventory, Collecting RCV, ALE funds, Repairs/Rebuild
- All claim Regulations, Statues, Case Law, CDI Bulletins/Options on Resource Page
Thank you for joining us

Have a nice day!
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Best Practices for Assisting Disaster-Impacted Clients with Insurance Matters – Part 2

Presented by:
Amy Bach, Esq
United Policyholders
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Government and nonprofit partners

Volunteers

• Survivor to Survivor - previous catastrophic loss survivors paying it forward
• Consumer oriented professionals
  • Damage and repair/rebuild cost estimators
  • Lawyers
  • Public Adjusters
• Tax and Financial Planning experts
• Construction and Real Estate professionals

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After this learning experience, trainees will:

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- Have an understanding of best practices for advising or referring disaster-impacted clients.
• Special Post Disaster Rules
• Estimating Dwelling Losses
• Disputes/Resolutions/Representing
Special Post-Disaster Rules
Federal, State and Local Designation
DisasterAssistance.gov
Special Post-Disaster Rules (CA)

- **Time to Collect Full Replacement Cost**
  - 36 months

- **Time to Collect Additional Living Expenses**
  - 24 months + 12 month extension (if insured acting in good faith and with reasonable diligence encounters delay) for a total of 36 months

- **Rotating Claims Adjusters**
  - If, within a 6-month period, an insurer assigns 3+ claims adjusters, an insurer shall establish a primary point of contact for the insured and provide one or more direct means of communication

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Special Post-Disaster Rules (CA)

Suits

- Time limit to bring suit is extended to 24 months after inception of the loss + tolling

Ability to Combine Coverages

- If limits for coverage to rebuild or replace the primary dwelling are insufficient, an insured may combine payments for claims for losses up to the policy limits for the primary dwelling (cov. A) and other structures (cov. B)
• Public Adjusters
• Construction cost estimators
• Restoration/Remediation Specialists
• Contractors/Builders
• Indoor Air Quality/Industrial Hygienists
• Forensic Experts/testing/labs
• Policyholder Attorneys
Sources of Free Help

- United Policyholders’ Roadmap to Recovery program
- Local building dept., tax assessor records
- Original dwelling plans
- Professionals offering pro bono help
- State DOI
- FEMA, SBA, OES
- Charitable, non profit builders
Estimating Dwelling Losses
• Xactimate estimates look fancy and comprehensive, but only accurate if scope was properly defined and all pricing is current and local

• Most construction professionals base their estimates on drawings, plans, sub-bids
Claims Adjustment Process – Depreciation/Holdbacks

Cost to put my home back together with new building material

Value of my home an instant before the fire (What you are owed until you repair, rebuild, or replace)

Deduction in value of materials due to wear and tear

Actual Cash Value

Depreciation

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Duties of Insurer/Insured

Insurers

- Duty of Good Faith and Fair Dealing
- Timely, in compliance with regs/laws/policy
  - Investigate
  - Communicate
  - Process Claim, pay or deny

Policyholders

- Duty to cooperate, provide reasonable POL
- Prompt notice of loss, allow inspections, give recorded statement, submit to EUO

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Most policies contain an examination under oath section.

The insurer has given itself the right to question you “under oath” about the details of the loss/claim.

“Under oath” means you legally swear that your answers are truthful.
Recorded Statements/Examinations Under Oath

- Used to screen out fraudulent claims and test an insured’s credibility
- A homeowner who makes a claim for policy benefits must cooperate when an insurer makes a reasonable request to examine them under oath or risk losing the right to recover the funds they’re entitled to.
Disputes/Resolutions/Representing
Reaching Partial and Final Settlements

- Continuing Duties
- Keep eye on Statute of Limitations
  - Tolling
- Managing other claim deadlines
Dispute Resolution Options

Negotiation
• Self-help/professional

Mediation
• Private/voluntary/court-ordered

Appraisal
• Most policies allow appraisal for disputes of amount/value of a loss

Arbitration
• Can be faster and cheaper than litigation, but no jury

Litigation
• Filing a lawsuit

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Representing Clients

- Pro Bono
- Hourly
- Contingency Basis
- Referrals

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Filing Suit Against an Insurer/Agent/Broker

• Know thy limits
  • Literally (policy limits)
  • Professionally

• Insurance coverage/claim dispute pleading and practice are a specialty
Thank you for joining us

Have a nice day!
Pro Bono Training Online, On Your Time.
Common Workplace Safety and Procedures – Part 1

Presented by:
Jora Trang
Worksafe
Jora Trang
Chief of Staff and Equity
Worksafe
jtrang@worksafe.org
Preventing worker illness, injury, and death by bringing justice to the workplace.

- Increasing worker power
- Supporting more protective laws for workers
- Ensuring just treatment for injured workers
- Raising awareness about occupational safety & health (OSH)
After this learning experience, trainees will:

1. Understand overview of occupational health and safety rights
2. Understand Employer’s Duties
3. Understand Worker’s rights
• Fundamentals
• Worker’s Rights
• Immigrant Status and Workers Rights
Fundamentals
Post-Disaster OSH Issues

Cal/OSHA protections for Occupational Health & Safety
Occupational health is about the social, mental and physical well-being of workers.

Goals:

- prevent workers getting sick because of their jobs
- protect workers from all hazards on the job
- adapt the workplace to workers’ mental and physical needs
- STOP blaming workers for their injuries
- Create a retaliation-free work environment that rewards workers for noting hazards
Categories of Workplace Hazards

**Physical**
- Humidity
- Temperature
- Vibration
- Noise
- Radiation
- Sun
- Electricity
- Lighting

**Safety**
- Falls
- Slips/Trips
- Cuts
- Amputation
- Crush between
- Struck by

**Work organization/psychosocial**
- Work pace
- Intensity
- Social support
- Workload
- Job control
- Flexibility
- Work-life balance

**Ergonomic design**
- Forceful motion
- Repetition
- Direct contact
- Postures (awkward & static)

**Chemical**
- Fume
- Gas
- Dust
- Solid
- Liquid
- Mist
- Vapors

**Infectious & Biological**
- Bloodborne disease
- Virus
- Rabies
- Snake bite
- Mold
- Bacteria
- Needlestick
Provide a healthy and safe work environment
• Responsible for enforcing health and safety laws, rules and standards

• DOSH has a team of inspectors who are either CSEs (compliance safety engineers) or IHs (industrial hygienists) that:
  • Inspect workplaces
  • Issue citations
  • Require abatement (fixing)
  • Issue OPUs (Orders Prohibiting Use)
• Comply with health and safety rules, laws, & standards
• Provide a safe place to work
• Protect the health and safety of ALL workers on the jobsite
• Establish, implement, and maintain an effective Injury and Illness Prevention Program → Find it & Fix it Safety Plan
Workplace Safety Plan - the IIPP

1. Responsibility
2. Compliance
3. Communication WITHOUT Retaliation
4. Hazard Identification & Assessment
5. Accident/Exposure Investigation
6. Hazard Correction
7. Effective Training and Instruction
8. Recordkeeping
Workplace Safety Plan

Hierarchy of Controls

- Eliminate exposure before it occurs
- Change the workplace
- Workers or managers must do something
- Workers must wear something

Most Effective
Most Sustainable

Least Effective
Least Sustainable
Workplace Safety Plan

**Eliminate or Isolate:** Do not work until AQI is safe, distance between workers and hazards i.e. move a loud generator away.

**Substitution:** Work indoors in ventilated HVAC environment, use nontoxic cleaning substances.

**Engineering Controls:** Fall protection, escape and safety route/plans, use wet methods to control dust.

**Administration Controls:** Work in teams, rotate workers to lessen exposure, work shifts to avoid worker fatigue, buddy system, worker and supervisor trainings, perform heavy work during cooler parts of the day, follow safe work practices.

**Personal Protective Equipment:** N95 masks, drinking water, proper protective clothing and gloves, sunscreen, hard hats, safety goggles, steel toe shoes, coveralls, hazmat, ear plugs.
Worker’s Rights
Workers’ Rights

KNOW

TAKE ACTION

PROTECTION
• Know about the risk of exposure to wildfire smoke
• Training on wildfire smoke
• Request and get health and safety information
• Know what are ways it can be transmitted in the workplace
The Right to Protection

- To work in a safe and healthful workplace
- Hierarchy of Controls to protect the workplace with PPE as the least protective measure
- N-95 mask to protect from wildfire smoke
The Right to Take Action

- Know the risk of exposure to the wildfire smoke
- Complain about health & safety
- Refuse to work in an unsafe work environment (death, bodily injury)
- Participate in a workplace health and safety committee
- Participate in a Health & Safety Inspections and Proceedings
Right to Refuse Work

- Applies to situations in which a worker in good faith believes that performing the task will result in “REAL AND APPARENT” danger (a fact-based case-by-case analysis)
Do not simply refuse or walk off the job.

Tell your supervisor you believe there is a serious hazard.

Ask for a union representative.

Tell the supervisor you will do the job if it is made safe.

Offer to do other work that is not dangerous.

Ask for a safety manager to inspect the worksite.

Call DOSH to request an “imminent danger” inspection.
Subcontractor Schemes

- Disaster Cleanup: Subcontractors use an informal labor force:
  - Construction crews
  - Domestic workers
  - Day Laborers

- Lack of training

- Lack or compromised OSH protections
## Possible Hazards & Toxic Exposure

<table>
<thead>
<tr>
<th>Category</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electrical Hazards</td>
<td>Carbon monoxide poisoning, lifting injuries, heavy equipment, extreme heat</td>
</tr>
<tr>
<td>Unstable Structures</td>
<td>Hazardous materials response, fire, confined spaces, worker fatigue</td>
</tr>
<tr>
<td>Respiratory Protection</td>
<td>Rodents, snakes and insects, downed electrical wires, working outdoors</td>
</tr>
<tr>
<td>Felled Trees</td>
<td>Large pieces of debris with potentially hazardous chemicals</td>
</tr>
<tr>
<td>Dangers</td>
<td>Drywall &amp; asbestos, mold, exposures, furniture and items with potentially sharp elements, toxic cleaning chemicals</td>
</tr>
</tbody>
</table>
Safety Rights Are Protected from Discrimination!

- Health and Safety Laws in California make it unlawful for an employer to:
  - *Retaliate* against a worker for exercising her health and safety rights.
  - *Fire* a worker for refusing to work in an unsafe work environment.
  - *Retaliate* against a worker for disclosing information about the employer’s working conditions.
Immigrant Status and Workers Rights
Immigration status is irrelevent, all workers are protected.
No Immigration Based Retaliation!

Employers cannot:

• Report or threaten to report a worker’s (or their family member’s) immigration status

• Extortion: prohibits a threat to report a person’s immigration status—or suspected immigration status to obtain his or her property may be extortion.
Engage in unfair immigration-related practices which include:

- Requesting more/different documents than required under federal law;
- Using E-Verify in a manner not required under law;
- Threatening to file/filing a false police report; and
- Threatening to contact/contacting immigration authorities.
What if there is Retaliation? - DLSE

Retaliation are handled by the Labor Commissioner – NOT Cal/OSHA

- Or Federal OSHA
- Discrimination and Retaliation for exercising your health and safety rights is handled by another agency
- Deadlines:
  - Fed OSHA: Within **one month** under 11(c) for Fed OSHA
  - DLSE: Within **one year** under 98.7 for DLSE ((Amended by Stats. 2020, Ch. 344, Sec. 1. (AB 1947) Effective January 1, 2021.)
Thank You
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Common Workplace Safety and Procedures – Part 2

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- Increasing worker power
- Supporting more protective laws for workers
- Ensuring just treatment for injured workers
- Raising awareness about occupational safety & health (OSH)
After this learning experience, trainees will understand:

1. Understand environmental factors within occupational health and safety
2. Wildfire Smoke Standard
3. Intersections of COVID-19 and Heat
• Environmental Factors
• Wildfire Smoke Standard
• Intersections of COVID-19 and Heat
Environmental Factors
PROTECT OUTDOOR WORKERS FROM WILDFIRE SMOKE

We must act now to protect workers from smoke hazards that can have lasting health consequences.

WORKSAFE
Intersection with Climate Change

- Rising average temperatures globally
- Extreme weather patterns i.e. heat waves
- Wildfire Smoke & Indoor Heat Standard needed to address this
Air Quality Index (AQI) ~ 151 or Greater

Current AQI (Combined PM and O₃)
Monday, January 27, 2020 11:00 PM PST
Santa Rosa
San Francisco
San Jose
Livermore
Oakland
Antioch
Vacaville
Elk Grove
Woodland
San Rafael

Current Conditions
Air Quality Index (AQI) observed at 0:00 PST

45 Good

Health Message: None

Note: Values above 50 are considered Beyond the AQI. Follow recommendations for the Hazardous category. Additional information on reducing exposure to extremely high levels of particle pollution is available here.

AQI - Pollutant Details

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Value</th>
<th>Grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ozone</td>
<td>17</td>
<td>Good</td>
</tr>
<tr>
<td>Particles (PM2.5)</td>
<td>45</td>
<td>Good</td>
</tr>
</tbody>
</table>

Air Quality Forecast

Today
Air Quality Index (AQI) 45 Good
Health Message: None

Tomorrow
Air Quality Index (AQI)
Health Message: None

AQI - Pollutant Details

<table>
<thead>
<tr>
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</table>
Particulate Matter (PM) ~ 2.5

- PM = mixture of solids and liquid droplets floating in the air
- Some particles are released directly from a specific source & others are from chemical reactions in the atmosphere.
Particulate Matter (PM) ~ 2.5

- Fine particles (PM2.5) are 2.5 mm in diameter or smaller
- Produced from all types of combustion
Studies connect particle pollution to these health issues, including:

- irritation of the eyes, nose and throat
- coughing, chest tightness and shortness of breath
- reduced lung function
- irregular heartbeat
- asthma attacks
- heart attacks
- premature death in people with heart or lung disease
• Communicate
• Training
• Engineering Controls
• Administrative Controls
• Respiratory protection for voluntary usage
• Respiratory protection requiring a fit test and medical evaluation
• Any ER that “reasonably anticipates” that their employees may be exposed to wildfire smoke
• When current AQI for PM 2.5 is 151+
Exempt ERs

- Firefighters engaged in wildland firefighting
- EEs exposed to AQI for PM2.5 of 151 or greater for a total of one hour or less during a shift
- ER demonstrates that concentration of PM 2.5 does not exceed a concentration that corresponds to AQI of 151 or greater by measuring PM2.5 at the worksite
Exempt ERs

- Enclosed buildings or structures where air is filtered by mechanical ventilation system and ER ensures all windows, etc. are closed to minimize contamination by outdoor/unfiltered air.
- Enclosed vehicles where air is filtered by cabin air filter & ER ensures windows, etc. are closed to minimize contamination by outdoor/unfiltered air.
• Identification of Harmful Exposures

• Communication - ERs must implement a system for communicating

• Training – ERs must provide effective training that includes at least the information contained in Department of Industrial Relations
Control of harmful exposures to EEs – ERs must reduce workers' exposure to wildfire smoke by:

- Providing (if feasible) an enclosed location with filtered air so exposure is less than 151 OR
- Relocating to another outdoor location where the current AQI for PM2.5 is lower, changing work schedules, reducing work intensity, or providing more rest periods.
• Providing respiratory protective equipment if employers cannot reduce workers' exposure to PM2.5 to a current AQI of 150 or lower.
  • If AQI is 151 to 500, ERs must provide NIOSH-approved particulate respirators (i.e. N95) to ALL EEs for voluntary use, AND
  • TRAIN on the new regulation, the health effects of wildfire smoke, and the safe use and maintenance of respirators.
  • If AQI for PM2.5 is higher than 500, ER must provide AND require EEs to use NIOSH-approved particulate respirators that will reduce EE exposure to an AQI less than 151.
N95 Particulate Respirators

Drawing Showing Proper Fitting of a Filtering Facepiece Respirator
(shaving is not required for voluntary respirator use)
Intersections with COVID 19 & Heat
Issues raised by workers - what their ERs are claiming:

- “We can’t provide PPE because there’s not enough face masks right now.”
- Retaliation for reporting concerns
- PPE is making them hotter
- Workers having to clean buildings after hours wearing PPE with the air conditioning off
- Workers having to go in and out of air-conditioned vs hot outdoor environments
Heat is the leading weather-related killer in the US
Between 1992 and 2017, more than 815 workers were killed
70,000 were seriously injured by heat stress
Preventative, timely, and quick action can save lives
The body normally cools itself by sweating. In hot weather, especially with humidity, sweating isn't enough. Body temperature can rise to dangerous levels if precautions are not taken. Heat Illness most affects those who have not built up a tolerance to the heat (acclimatization).
Definition: temporary adaptation of the body to work in the heat that occurs gradually when a person is exposed to it.

- Gradually increase work time
- Scheduling Workers
  - For workers with previous experience with the job in this climate, schedule no more than a 50% of the usual work shift on day 1, 60% on day 2, 80% on day 3, and 100% on day 4
Thank You
Thank you for joining us

Have a nice day!
Pro Bono Training Online, On Your Time.
Consumer Law Issues
After a Disaster
Part 1

Presented By:
Desiree Nguyen Orth
East Bay Community Law Center
After this learning experience, trainees will be able to assist and advise consumers with:

• Recovering important documents
• Preventing and dealing with Identity Theft
• Price gouging

See Part 2 for:
• Avoiding Scams
• Debt
Recovering Important Documents
Recovering Important Documents

Types of Important Documents to Locate

- Ownership documents
- Personal identification documents
- Insurance documents
- Financial documents and instruments
- Records and warranties

A sample list of important documents to locate is provided with this training.
Help with Lost Documents

- Local assistance centers
- Recovering identification documents may need to be completed in a specific order.
- California Insurance Code § 2071 states that an insurer will provide a copy of the insurance policy within 30 days of request.
- The consumer will need to call each agency or company in order to replace the documents that are lost, misplaced, or otherwise unaccounted for.
Set up a Secure Mailing Address

It is very important for the person to establish a trustworthy and reliable place to get their mail and check it regularly following a disaster.
Preventing and Dealing with Identity Theft
Preventing ID Theft

1. Freeze the Credit Report
2. Monitor Existing Accounts
3. Monitor the Credit Report
Dealing with Identity Theft

- Make a Report: FTC
- Contact the Companies
- Fraud Alert / Credit Freeze
- Make a Report: Police
- Change Account Credentials

Identity Theft After a Disaster
**Taking Action Against ID Theft**

1. Start at IdentityTheft.gov.
2. Make a police report.
3. Call the companies to report ID theft and close the account/reverse charges.
4. Change logins, passwords, and PINS.
5. Freeze and place a fraud alert on the credit report.

**Prevention**

1. Freeze credit reports and unfreeze as needed.
2. Monitor existing accounts by checking itemized statements each month.
3. Monitor the credit report for suspicious tradelines.

**Recap on ID Theft Issues**
Other Free Reports

- Employment
- Tenant
- Check and Bank
- Medical
- Low-Income and Subprime
Price Gouging
Price gouging is the intentional increase of more than 10% in the prices of consumer goods and services after a disaster.

*More information about the specific goods and services subject to price gouging laws can be found in California Penal Code §396.*
New Law Alert (California SB 1196-Umberg, 2020)

1. 50% profit cap;
2. Applies online, in person, or in stores;
3. Price gouging timeframe may extend to before the emergency declaration;
4. Allows extensions for additional extension periods in 30 day increments.

Violation of the price gouging law is a misdemeanor punishable by imprisonment in a county jail for a period not exceeding one year, or by fine of not more than $10,000, or by both fine and imprisonment, (California Penal Code § 396(h)) and civil enforcement of up to $2,500 per violation (California Penal Code § 396(i) and B&P code § 17206)
Desirée Nguyen Orth

Director
Consumer Justice Clinic
East Bay Community Law Center
Thank you for joining us

Have a nice day!
Consumer Law Issues After a Disaster

Part 2

Presented By:
Desiree Nguyen Orth
East Bay Community Law Center
After this learning experience, trainees will be able to assist and advise consumers with:

- Avoiding scams
- Managing Debt

See Part 1 for:

- Recovering Important Documents
- Identity Theft
- Price Gouging
Avoiding Scams
Common Red Flags

- Demands for upfront payment.
- Door-to-door sales (sign-on-the-spot contracts).
- Cash only or wire transfer payments.
- Anything that sounds too good to be true.
- Offers assign insurance or federal benefits.
- Requests for exchanging or transferring money.
- Transaction involving a benefit or thing the consumer never signed up for.
Types of Contractors

Construction Contractor

For home and property repair.

Public Insurance Adjuster

Represents the consumer's interest.

An independent adjuster represents the insurance company.
<table>
<thead>
<tr>
<th>Step</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Licensure of the company.</td>
<td></td>
</tr>
<tr>
<td>Insurance.</td>
<td></td>
</tr>
<tr>
<td>A website with a lot information.</td>
<td></td>
</tr>
<tr>
<td>Check for reviews and the company’s BBB profile.</td>
<td></td>
</tr>
<tr>
<td>Generally, a local company is a better choice.</td>
<td></td>
</tr>
<tr>
<td>Negotiate a reasonable down payment and pay the remainder when the</td>
<td></td>
</tr>
<tr>
<td>work is finished.</td>
<td></td>
</tr>
<tr>
<td>Do not rely of branded shirts or magnets on vehicles alone to</td>
<td></td>
</tr>
<tr>
<td>establish legitimacy.</td>
<td></td>
</tr>
</tbody>
</table>
Licenses can be checked on the California Department of Insurance site online.

Advise the consumer of questions to ask when hiring a public insurance adjuster. Ask for three past client references and call each reference to ask:

- Did that specific public adjuster actually work on the person’s claim?
- Did the client feel confident that they got the best possible result?
- Did the public adjuster answer all their questions throughout the process?

More questions for these and repair contractors available at [www.uphelp.org](http://www.uphelp.org)
If a consumer tries to register for FEMA assistance online, but gets a verification error, he should call FEMA directly.

If the consumer receives a call from someone asking to verify their FEMA registration, it’s likely a phishing scam.

Always ask to see a FEMA photo ID badge. A FEMA shirt or jacket is not proof of identity.

Federal and state workers do not ask for or accept money. Do not let anyone into the home if they say they are there to do a FEMA inspection, but need payment first.
EDD Scams

1. EDD and Bank of America *never* text consumers to reactivate a debit card.

2. Verify if an EDD text message is legitimate by checking UI online or the mail notice for the same information.

3. Consumers can call Bank of America using the telephone number on the back of their debit card to check if a bank related text is legitimate.

4. If a consumer did not apply for EDD, but receives notice related to a claim purported to be from them, contact EDD directly because the notice may be either a phishing scam or indication of identity theft.
Other Possible Scams

**Housing Scams**
- Paying upfront.
- Wiring money as a deposit.
- Property unseen and contract/lease unsigned.

**Job Scams**
- Work-from-home or secret shopper listings.
- Deposit a fraudulent check and withdraw money to “verify” the account for direct deposit.
- Consumer is responsible for the fraudulent deposit and the account may be closed.

Consumers should never give out their bank account number to anyone they find online who is offering work or a place to stay sight unseen.
Debt
Consumer may feel overwhelmed after a disaster. A good place to start is by making a list of financial obligations to prioritize payments.

1. Family necessities—food and utility
2. Housing and transportation
3. Secured Debt and Loans
4. Unsecured Debt and Loans

Possible resources and emergency assistance to help save cash resources:

➔ Food banks
➔ Unemployment insurance
➔ CalWORKS and CalFresh
Negotiate a temporary reduced payment, or move the payment date to a different day of the month if that helps.

Consumers are highly advised to stay away from high cost or high interest loans such as payday or installment loans as these are debt traps.

Consumer Self-Directed Strategies

01 | Negotiate a temporary reduced payment, or move the payment date to a different day of the month if that helps.

02 | Consolidate debt to a lower interest credit card (there may be fees, and the low interest rate is usually introductory only).

03 | Try prioritizing one or two cards, one with the highest balance and one with the lowest.

Consumers are highly advised to stay away from high cost or high interest loans such as payday or installment loans as these are debt traps.
## Unsecured Debt: Debt Management

### Outsourcing Help

<table>
<thead>
<tr>
<th>Credit Counseling</th>
<th>Debt Settlement (a.k.a. Debt Relief)</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Usually non-profit organizations</td>
<td>- Usually for profit and charge a percentage of the debt resulting in no guarantee of savings.</td>
</tr>
<tr>
<td>- Provide free general budgeting and advice</td>
<td>- Some creditors will not negotiate with DSC</td>
</tr>
<tr>
<td>- Prevent collection efforts or late fees.</td>
<td>- Typically require the consumer to make large payments into an account each month while cutting off payments to the creditor.</td>
</tr>
<tr>
<td>- Debt Management Plans-optional</td>
<td>- Consumers still get sued.</td>
</tr>
<tr>
<td>- Reduce interest rates by half</td>
<td>- May involve debt forgiveness which may have tax implications.</td>
</tr>
<tr>
<td>- Consumer is not delinquent on payments</td>
<td></td>
</tr>
<tr>
<td>- Often no tax implications</td>
<td></td>
</tr>
</tbody>
</table>
Delinquent or missed payments may be reported on the consumer’s credit report with negative effect.

“Charge off” means that the account is closed for future use but the obligations to pay still exists.

Creditor may and typically sells charged off debts to third-party debt collectors.

4 year statute of limitations for breach of contract claims.
Unsecured Debt: Lawsuit on Debt

- Seek help from an attorney or legal aid organization immediately to avoid a default judgment and missing important deadlines.

- Exempt income cannot be subject to enforcement of a judgement.

- A claim of exemption may reduce the amount a consumer can have garnished or levied.

- Bankruptcy may be an option for consumers with assets to protect such as property and employment income, but not likely helpful for low income consumers.
- **Liability-only policy**: will not cover the loss of a vehicle due to a disaster.

- **Comprehensive policies**: usually cover the loss of a vehicle in the event of a disaster, but only up to the fair market value of the vehicle.

- **GAP coverage**: will cover the deficiency, which is the difference between the loan balance and the actual cash value of the vehicle. Without GAP coverage, the consumer is liable for the deficient amount.
**Federal**

- Place loans on hardship or forbearance.
- Seek IDR if possible.
- If already on IDR, request an adjustment.
- On IDR, the if the consumer’s income is low enough, the payment may be $0.

*Consumers should never pay someone to manage their student loans as solicitation for this may be a scam.*

**Private**

- Unsecured debt like credit cards– subject to the same collection and enforcement laws, including the statute of limitations.
- Forbearance is at the discretion of the lender.
- Even with hardship, monthly payments may be $5/month.
Desirée Nguyen Orth
Director
Consumer Justice Clinic
East Bay Community Law Center
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Employer Responsibilities and Protecting the Rights of Employees After A Disaster

Presented by:
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Staff Attorney
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Preventing worker illness, injury, and death by bringing justice to the workplace.

- Increasing worker power
- Supporting more protective laws for workers
- Ensuring just treatment for injured workers
- Raising awareness about occupational safety & health (OSH)
After this learning experience, trainees will:

1. Have an overview of workers’ protections related to disaster relief work.
2. Understand and be able to identify common worker issues post disaster.
• Unemployment Insurance
• Disaster Unemployment Assistance
• Discharge and Wrongful Termination
• Common Leaves of Absence
• Common Wage and Hour Issues
• Post-Disaster
• Immigration Status & Workplace Rights
• Workers Compensation
Unemployment Insurance
Unemployment insurance provides temporary and partial wage replacement for workers who become unemployed through no fault of their own.
Earned enough wages during the base period to establish a claim,

Totally or partially unemployed,

Unemployed through no fault of their own,
Unemployment Insurance

Physically able to work,

Available for work,

Ready and willing to accept work immediately,

Actively looking for work.
Disaster Unemployment Assistance
Disaster Unemployment Assistance (DUA) Eligibility:

- Individual must be out of work as a “direct result” of a major disaster, and
- Must first apply for UI benefits through EDD and be determined ineligible.

Example: A worker is ineligible for UI because they were self-employed or have exhausted the unemployment benefits available to them.
DUA begins on the first day of the week following a presidentially declared disaster and ends 26 weeks after disaster was declared.

Both UI & DUA require work authorization; undocumented workers are ineligible.

UI and DUA Claims can be filed with the California Employment Development Department (EDD)
Common Leaves of Absences
Generally, employees in California are considered “At-Will” meaning they may be disciplined, discharged, or can quit at any time without cause.
Exception to At-Will Employment

By contract (individual employment contracts or CBAs)
By statute/public policy

Retaliation:

- An employer may not take an adverse action against an employee for engaging in a protected activity.
- Retaliation claims can be filed with the California Division of Labor Standards Enforcement and must be filed within 6 months of the retaliatory act.
California's Fair Employment and Housing Act protects individuals from illegal discrimination by employers based on an employee's actual or perceived membership in a protected category. These include race, national origin, religion, age, disability, sex, gender, sexual orientation, gender identity, gender expression, medical condition, genetic information, marital status, and military and veteran status.

Discrimination claims may be filed with the California Department of Fair Employment and Housing.
Leaves of Absence

- Volunteer Firefighter and Emergency Rescue Personnel Leave
  - California provides job-protected unpaid leave to employees who serve voluntary emergency first responders.
Leaves of Absence

CFRA & FMLA provide up to 12 weeks of job protected leave to recover from serious injury or illness or provide care to seriously ill or injured family member.

- Applies to employers with 50+ employees.
- You can use these programs along with Disability Insurance or Paid Family Leave.

Distinctions

- Federal v. State
- FMLA additions
- CFRA 2021 changes
• **Paid Sick Leave**
  
  • California requires that employers provide a minimum of 3 days (or 24 hours) of paid sick leave per year.
  
  • Employees may use such leave to seek care or recover from illness or provide care to a sick or injured family member.
Leaves of Absence

- California Child-Care & School Emergency Leave
  - 40 hours job-protected unpaid leave per year
  - Applies to employers with 25+ employees
Common Issues
Common Wage and Hour Issues Post-Disaster

Reporting Time Pay for Nonexempt Employees

Pay for Exempt Employees
Common Wage and Hour Issues Post-Disaster

Delays in Wage Payment

Broader Protections Against Wage Theft

Where to file claims
Common Leaves of Absences
With the limited exception of unemployment insurance and disaster unemployment assistance, all the workplace rights described are available to workers without regard to immigration status.
Workers Compensation
It is the **exclusive remedy** for injured workers against their employers.

It is a “no-fault” administrative system in which:

- Employers pay to obtain **mandatory** Workers’ Compensation Insurance.
- Which provides benefits to employees when they are injured for their medical costs and other benefits.
- Provides benefits for injured workers.

**What is Workers’ Compensation?**
Mandate for Employers

• All employers in California are required to have workers’ compensation insurance. (LC 3700)

• An employer who has not purchased required workers’ compensation insurance could be sued for civil damages.
• This is the DWC-1
• ER MUST provide it within one working day of knowledge of injury or risk penalty of up to $5000
When an Injury Occurs...

- ER gives EE a claim form
- Call I&A officer if ER does not provide a claim form – forms are available at DWC or EDD
- If ER refuses to provide DWC-1 – ER must an Application for Adjudication with WCAB within one year of the date of the injury
Filling out the DWC-1 starts the clock ticking for payment of benefits

ER gives EE a claim form
EE fills out their portion – keep the bottom for their records
EE returns form to EE
ER records receipt of form
ER gives form to insurance carrier
- Provision of treatment must continue until the date that the liability for the claim is accepted or rejected.
- If not, the employer (ER) may have to pay an automatic 10% unreasonable delay penalty.
- The employee’s (EE) injuries are presumed compensable if the claim isn’t denied within 90 days of receipt of the DWC-1.
- This presumption can only be rebutted with “newly discovered” evidence.

Within ONE day after filing claim form – ER must authorize treatment.

Until the claim is rejected or accepted – ER responsible for up to $10,000 medical expenses.
### Who is an Employee?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Household domestic workers – but see exception</td>
<td>• Part-time household domestic workers who are under 52 hrs or $100</td>
</tr>
<tr>
<td>• A person who works for independent or general contractor</td>
<td>• Independent contractors</td>
</tr>
<tr>
<td>• An <strong>undocumented worker</strong> (but may not get all the WC benefits)</td>
<td>• Federal employees fall under the Federal workers’ compensation systems</td>
</tr>
<tr>
<td>• A temporary worker</td>
<td>• A worker who is no longer working for the employer – but see exceptions to this rule</td>
</tr>
</tbody>
</table>
### Yes

- Most of the time, individuals that hire day laborers are “employers” for workers’ compensation purposes.

### NO

- If they are classified as independent contractors.
- If homeowner is hiring day laborer to do household work for limited hours (less than 52 hours) and compensation (less than $100 from an individual employer in the 90 calendar days before the accident). Labor Code § 3352(h)
Workers can receive benefits from a special fund called the Uninsured Employers Benefits Trust Fund (UEBTF).

Filing a workers' compensation claim with the UEBTF is a very complicated process that involves 11 steps!

The DWC has made information and assistance officer (I&A) officers available to assist applicants.

1-800-736-7401 * https://www.dir.ca.gov/dwc
Resources

• Employment Development Department
• Department of Industrial Relation FAQ on Paid Sick Leave
• Legal Aid at Work
Thank you for joining us

Have a nice day!
Pro Bono Training Online, On Your Time.
FEMA Issues & Appeals

Presented by:
Kendall Jarvis,
Legal Aid of Sonoma County
After this learning experience, trainees will:

• Learn about six phases of a FEMA appeal and where in the process attorneys can assist.

• Learn how the Disaster Reform and Recovery Act impacted the monetary distribution of government funds.
• Common Issues
• Attorney Assistance
• Disaster Recovery Reform Act of 2018
Common Issues
What is FEMA?

Stafford Act prohibits duplication of benefits or services.

FEMA mistakenly determines they do not have an outstanding unmet need.
FEMA Eligibility Issues

• To obtain assistance from FEMA, an individual must establish:
  • Eligibility to receive benefits.
  • Current unmet need not covered by insurance.
  • Assistance requested can be provided by FEMA.

• Common Issues:
  • Establishing eligibility.
  • Lack documentation to satisfy eligibility
  • Do not know what documents are needed.
Attorney Assistance
Attorney Assistance

Call
- Contact FEMA Help Line
- Inquire about the case

Write an Appeal
- Help to write a FEMA Appeal Letter
- Can file an appeal
• Can file an appeal within 60 days.
• Can file after 60 days
  • Need to include why it was late
• Full name,
• FEMA registration number,
• Disaster Number,
• Address of the individual’s pre-disaster primary residence,
• Current phone number and address,
• Individual’s signature,
• Reason for the appeal,
• Exhibits supporting the contention in the appeal
• Penalty of perjury language:
  • “I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.”
A Note on Documenting Evidence

• Can be hard to get documents due to damage

• Potential Document Alternatives:
  • Utilities Bill
  • Neighbor’s Statement

• Think outside the box when collecting
FEMA will review the individual or household’s appeal letter and FEMA file. If FEMA determines that they need more information to make a final decision, FEMA may take one or more of the following actions:

- Send a letter requesting that additional documentation be submitted within 30 days
- Contact a third party to verify the information submitted in the appeal
- Schedule an inspection to verify the claim submitted in the appeal

FEMA must make an appeal decision within 90 days of receipt of the appeal letter. Once FEMA has made a final appeal decision the individual or household will be notified in writing.
FEMA Appeal Letter Process

• Can send a secondary appeal.
• Especially if new information has come to light while the letter has been submitted.
• Send an additional letter if FEMA has not responded within 90 days.
Disaster Recovery Reform Act of 2018
• The DRRA is the most comprehensive reform of FEMA’s disaster assistance program since the Sandy Improvement Recovery Act of 2013

• The DRRA creates new authority and amends the Robert T. Stafford Disaster Relief and Emergency Assistance Act

• The intent of the DRRA is to improve pre-disaster planning, mitigation, response, recovery, and increase FEMA’s accountability.
Disaster Recovery Reform Act (DRRA) of 2018

- There are more than 50 distinct reforms implemented by the DRRA such infrastructural programs.
- While all DRRA reforms are important to consider, but will primarily focus on the reforms that impact disaster survivors.
The highlights of the DRRA changes will be broken down into 3 categories:

- Individuals and Household Assistance Improvements,
- Duplication of Benefits Limitations,
- Arbitration Right During Appeals Process.
Individuals and Household Assistance

• Increases the amount of overall financial assistance by:
  • Separating the maximum allowable amount of financial assistance by category with separate maximums for Housing Assistance and Other Needs Assistance.

• Before, individuals and households were limited to a combined financial assistance maximum, whether such assistance was categorized as Individual Assistance and/or Other Needs Assistance.
Example: Individuals and Household Assistance

Before:
- An individual or household would only be eligible to receive a maximum financial assistance award of $34,900.
- This was the overall maximum whether the assistance was paid as Housing Assistance or Other Needs Assistance.

After:
- Individual or household is eligible to receive up to $34,900 in Housing Assistance payments and $34,900 in Other Needs Assistance.
- Increased the overall maximum for such assistance from $34,900 to $69,800

Maximum assistance is increased annually - Check disasterassistance.gov to find the current max
Individuals and Household Assistance

• Excludes costs related to the maximum allowable assistance paid to individuals with disabilities for:
  • The repair or replacement of property as it relates to accessibility under FEMA’s Permanent Housing Construction, Repair Assistance, and Replacement Assistance Programs.
  • The repair or replacement of personal property as it relates to accessibility under FEMA’s Other Needs Assistance program.
• Prior to this change, such costs were included in the maximum allowable assistance provided by FEMA of $34,900.
Example: Individuals and Household Assistance

Before:
• the cost to replace a wheelchair was an eligible cost potentially covered by FEMA
• However, payment provided to replace the wheelchair would have been counted against the combined maximum allowable financial assistance.

After:
• Financial assistance payments related to the repair or replacement of the wheelchair would not reduce the overall combined maximum of $34,900 per category or $69,800 overall.
Duplication of Benefits Limitations

- Limits the collection of duplication of benefits payments by allowing FEMA to waive debts owed under the Individuals and Households Program, if:
  - The debt was erroneously distributed by FEMA,
  - The debt was not the fault of the recipient, and
  - Collecting the debt would be against equity and good conscience.
- Limiting FEMA’s ability to initiate a debt collection action more than three years after the final payment of such assistance has been made.
Arbitration Right During Appeals Process

• Allow for a more accountable appeals process by:
  • Providing for a right of arbitration during the appeals process when the initial written appeal of an individual or household has been denied.

Before
• Individuals and households had a right to submit a written appeal as it related to their assistance eligibility within 60 days of receipt of the decision from which the individual or household is appealing.
• The appeals process was internally overseen by FEMA.

After
• Individuals and households have a right to file a second appeal or request arbitration within 60 days of receipt of FEMA’s initial appeal decision or 180 days after submission of the first appeal, if FEMA does not provide a valid final appeal decision.
• The arbitration process shall be overseen by the Civilian Board of Contract Appeals and their final decision shall be binding.
Thank you for joining us

Have a nice day!
Pro Bono Training Online, On Your Time.
FEMA Overview & Assistance Programs

Presented by:
Kendall Jarvis,
Legal Aid of Sonoma County
After this learning experience, trainees will:

• Learn how and when FEMA is deployed in the event of a disaster.

• Learn about four FEMA programs that provide assistance and the eligibility rules for each program.
Agenda

- FEMA Overview
- FEMA Assistance Overview:
  - The Transitional Sheltering Assistance Program (TSA)
  - The Individuals and Households Program (IHP)
  - The Small Business Administration Loan Program (SBA)
  - The Cora Brown Fund (CBF) – Part of Other Needs Assistance
FEMA Overview
• FEMA manages and coordinates a number of federal disaster assistance programs in the wake of a presidentially declared disaster.
• Authorizes the President to provide federal assistance when the impact of an incident exceeds the capabilities of the local government.
Local government determines that it cannot handle the impact of an event.

Executive requests that the event be classified as a presidential disaster.

This request is sent to the President through FEMA.

President has the authority to classify the event as a presidentially declared disaster which will trigger FEMA assistance.

Upon declaration, FEMA will mobilize to assist with disaster response.

President can make an Individual Assistance, or IA declaration.
• Individual has 60-days from the date of the declaration to register with FEMA.
  • Registration can be completed online, over the phone, or in-person at the Local Assistance Center or Disaster Recovery Center.

• After 60 days, they may still be able to register if an extension was requested by the Government and approved by FEMA.
  • Generally, includes an additional 60-day period to register for FEMA benefits.
• Once the registration period is over, an individual may still be able to register once registration is over due to a legitimate reason.

• Individual need to contact FEMA directly and request approval for late registration.

• Can file formal complaint if FEMA refuses to provide information about late registration.
FEMA Eligibility

- Citizenship
- Location
- Suffered a Loss
- Only FEMA can Rectify
• The Transitional Sheltering Assistance Program (TSA)
• The Individuals and Households Program (IHP)
  • Other Needs Assistance (ONA)
  • Housing Assistance (HA)
• The Small Business Administration Loan Program (SBA)
• The Cora Brown Fund (CBF) – Part of Other Needs Assistance
The Transitional Sheltering Assistance Program (TSA)
What is Transitional Sheltering Assistance?

• Provide short term housing assistance
• The TSA program is not automatically available to support survivors in the aftermath of a presidentially declared disaster.
• The TSA program can pay the cost to board individuals in a hotel or motel for (generally) 5 to 14 day periods at a time, but can be extended.
• Once that authorization period expires, the TSA program will terminate such financial assistance.
Eligibility for TSA Benefits

- Register with FEMA
- Eligible to Receive FEMA Benefits
- Displace as a Result of Disaster
- No Alternative Housing
The Individuals and Households Program (IHP)
Individuals and Households Program (IHP)

• Provides financial assistance and direct services to eligible individuals and households who have uninsured or under insured necessary expenses and/or serious needs.
**Individuals and Households Program (IHP)**

**Housing Assistance:**
- Lodging Reimbursement
- Rental Housing
- Repair Property
- Replace Destroyed Property
- Provide Manufactured Housing
- Provide Construction Assistance

**Other Needs Assistance**
- Payment of disaster unemployment benefits
- Financial assistance to pay funeral costs,
- Unforeseen medical or dental expenses,
- Childcare expenses,
- Increased transportation expenses,
- Replacement of qualified personal property losses.
Eligibility for IHP Benefits

- Register with FEMA
- Eligible to Receive FEMA Benefits
- Direct Result of Disaster
- No Other Remedy
The Small Business Administration Loan Program (SBA)
Small Business Administration Loan Program (SBA)

• Provides low interest disaster loans to help repair or replace uninsured or under insured property.

• SBA disaster loans can be given to repair or replace the following types of property:
  • Real Property
  • Personal Property
  • Machinery/Equipment
  • Business Inventory and Assets

• Payments an individual received from their insurance company will be deducted.
Small Business Administration
Loan Program (SBA)

Renters:
- Borrow up to $40,000

 Covers:
- Repair or replace clothing
- Furniture
- Cars
- Appliances
Small Business Administration Loan Program (SBA)

Homeowners:
- Borrow up to $240,000

Covers:
- Repair or replace personal property - $40,000
- Repair or replace real property - $200,000
Small Business Administration Loan Program (SBA)

** Businesses: **
- $2,000,000

** Covers: **
- Physical Losses
- Economic Losses
Eligibility for SBA Loan

- Register with FEMA
- Eligible to Receive FEMA Benefits
- Direct Result of Disaster
- No Other Remedy for Loss
- Ability to Repay Loan
- Sign All Documents
The Cora Brown Fund (CBF)
• Created by Cora C. Brown to provide financial assistance to individuals and households that have outstanding unmet needs caused by a natural disaster.

• Has been absorbed by the Other Needs Assistance Program.

• An individual or household’s needs are classified as unmet if there is no other means of fulfilling the qualifying need.
The Cora Brown Fund /Other Needs Assistance Program can provide:

- Disaster related rebuilding assistance,
- Disaster related home repair assistance,
- Disaster related unmet needs assistance.

Financial assistance provided through the Cora Brown Fund is classified as a grant and does not need to be repaid.
Eligibility for Cora Brown Fund

- Register with FEMA
- Eligible to Receive FEMA Benefits
- Has an Identifiable Need
- Identifiable Need Unable to be Met
Thank you for joining us

Have a nice day!
Pro Bono Training Online, On Your Time.
Post Disaster Landlord Tenant Housing Issues Part 1

Presented by:
Ora Prochovnick,
Eviction Defense Collaborative
After this learning experience, trainees will:

1. Understand the applicable law for keeping people housed after a disaster.  
   • Continuing or resuming the tenancy  
   • Safe and healthy conditions

2. Be able to secure resources for tenant households.  
   • Relocation benefits  
   • Maintaining subsidies
• Initial Determinations

• Landlord Duties

• Condition of Premises
Initial Determinations
Where to Begin?

• What is the condition of the home?
  • Repairable? Destroyed?

• Which laws apply?
  • Determined by nature and duration of tenancy, type of housing, and location.
Landlord Duties
• Tenants have exclusive right of possession over rented property; landlords may not take away possession absent due process.

• Required process includes:
  • Written notice terminating the tenancy
  • Expedited court proceeding – “unlawful detainer”
• Landlords have a duty to maintain rented property in safe condition. Green v. Superior Court (1974) 10 Cal.3d 616
  • Warranty of habitability cannot be waived by tenants

• Every agreement to rent property includes an implied “covenant of quiet enjoyment.” Civ. Code §1927
Condition of Premises
Destruction of Premises

• If rented property is completed destroyed, the tenancy is terminated per Civil Code §1933.

• Key question is whether premises is actually destroyed, or whether landlord has duty to rehabilitate.
  • No clear definition of “destroyed.”
  • Advocate for tenant should look for factors that indicate feasibility of restoring any remaining structure.
Red Tag by Code Enforcement

- Administrative determination that premises is not safe to occupy.

- Code enforcement order should specify substandard conditions and what needs to be done to bring into compliance.

- Tenant is required to vacate, but their rights under the lease and the landlord’s duties are not extinguished.
• Does tenant have to pay the rent?
  • Not obligated to pay the rent if premises not in habitable condition.
  • Landlord should refund rent paid per diem for days tenant is out of possession.

• Tenancy survives when a property is red-tagged.
  • Red tag will interrupt ability to occupy premises and landlord has the duty to repair.
Red Tag by Code Enforcement

• Generally after red tag, owner obligated to pay relocation assistance.
  • Owner to pay tenant 2x fair market rent + deposit refund.

• NOT applicable if red tag is “result of a fire, flood, earthquake, or other event beyond the control of the owner, and the owner did not cause or contribute to the condition.”
  • Health and Safety Code section 17975, *et seq.*
Yellow Tag by Code Enforcement

• Administration determination that premises has **substandard conditions** but can be used to some degree.

• Tenant stays in possession.

• Owner obligated to repair to the standards under Civil Code 1941.1
• Tenant is entitled to rent abatement.

• Owner and tenant should negotiate rent reduction for lack of habitability.

• If no agreement, Tenant should continue to pay full rent.
  • Tenant to seek remedy through a local Rent Board or Small Claims Court.
• No administrative finding that premises is substandard, no requirement that tenant vacate.

• Tenant’s right of occupancy and obligation to pay rent continues.
  • Unless agreement to the contrary.

• Tenant may self-document any substandard conditions.
Tenant must negotiate with owner if planning to leave during remaining lease term.

Tenant should give at least 30 days notice.

Tenant is obligated to pay rent during that time.
If tenant breaking a lease, then tenant needs to:

- Find a replacement tenant or
- Offer to pay landlord advertising and re-rental expenses

Tenant will be obligated to pay the monthly rent until rented out.

- Landlord has an obligation to mitigate their own damages.
Thank you for joining us
Have a nice day!
Pro Bono Training Online, On Your Time.
Post Disaster Landlord Tenant Housing Issues Part 2

Presented by:
Ora Prochovnick,
Eviction Defense Collaborative
After this learning experience, trainees will:

1. Understand the applicable law for keeping people housed after a disaster.
   • Continuing or resuming the tenancy
   • Safe and healthy conditions

2. Be able to secure resources for tenant households.
   • Relocation benefits
   • Maintaining subsidies
• Tenancy protections
Tenancy Protections
Various local, state, and federal laws may provide to certain tenants:

- “Just cause” or “good cause” eviction protections
  - Can include right to return after substantial renovation

- Limits on amount of rent that can be charged or degree to which rent can be increased

- Relocation benefits, if tenant is displaced for “no fault” reasons
In the absence of any applicable “just cause” for termination requirements:

• Periodic tenancies (usually month-to-month) can be terminated without cause.
  • 60-day notice for tenancies of more than one year
    • (Civil Code 1946.1)
  • 30-day notice for tenancies of one year or less
    • (Civil Code 1946)

• Fixed term tenancies terminate at end of term, unless renewed.
Determine Whether Tenant Protections Apply

WHERE is the tenancy?
- Is there an applicable local ordinance?

WHAT is the type of tenancy?
- Is a federal subsidy program or other affordable housing restriction involved?

WHAT is the nature of the premises and WHEN did the tenancy begin?
- Is the tenancy of at least one year in duration and in housing covered by state tenant protections?
WHERE is the Tenancy?

California jurisdictions with local rent ordinances

**Northern California**
- Alameda
- Berkeley
- East Palo Alto
- Emeryville
- Hayward
- Los Gatos
- Mountain View
- Oakland
- Richmond
- San Francisco
- San Jose
- Union City

**Southern California**
- Beverly Hills
- Glendale
- Los Angeles
- Maywood
- Palm Springs
- San Diego
- Santa Monica
- Thousand Oaks
- West Hollywood
Examples of specific city ordinances:

- **San Francisco:**
  - Landlords can require tenants to temporarily relocate in the event of a disaster, but must offer them a chance to move back in on previous terms once repairs are completed.

- **SF Rent Ordinance Rules and Regulations 12.19**
• Santa Monica City Ordinance:
  • Relocation benefits for tenants forced to move from their home by Ellis Act withdrawal from rental use and certain other types of evictions, but there is an exception to the ordinance for disaster-related evictions.
  • Santa Monica does protect tenants displaced by disaster from being evicted based on nonpayment of rent.
• Santa Monica Municipal Code § 9009
The Tenant Protection Act of 2019

- Effective January 1, 2020

- Termination of tenancy must be based on one of 14 “just causes”
  - Civil Code 1946.2

- Caps annual rent increases at change in regional CPI (April to April), plus 5%
  - Civil Code 1947.12
State Tenant Protections

• Limits to coverage
  • Tenancy of 12 months, or 24 months if new tenants added
  • Exclusions include:
    • Single family homes (unless owned by corporate entity)
    • Housing built within past 15 years
    • Subsidized housing developments with income eligibility restrictions
    • Duplexes where owner lives in the other unit
Public Housing

- Owned and managed by local Public Housing Authority
- Subsidy attached to specific units
- Tenants may request transfer
Federal Housing Programs

Housing Choice Vouchers (Section 8)

- Tenant receives voucher to rent private market-rate housing.
- Subsidy administered by local Public Housing Authority.
- Tenant pays percentage – generally 30% of income; PHA pays balance of the rent (up to “fair market rent”)
- Voucher is mobile – tenant can move and use voucher at new unit.
Other HUD Programs:

- Project Based Section 8
- Section 236 (multifamily)
- Section 202 (elderly and people with disabilities)
Federal Housing Programs

• Features of HUD Programs:
  • Owned by non-profit or private entity
  • Subsidy attached to specific unit
  • Tenants may request transfer
Federal Program Tenant Protections

• Subsidized tenants in general have right to return to their housing.

• Disaster is not a basis for termination.

• Ensure that the disaster is not used as excuse to demolish unpopular developments.
Tenants MUST keep in contact with public housing authority and private owners/management company to find out when housing has been rehabilitated.

If housing provider/PHA cannot find tenant, the tenant may lose subsidy based on abandonment.

Stay in touch with residents’ association or other tenant leadership if applicable.
Price Gouging

During a State of Emergency as declared by the President, Governor, or local governing body:
- Prohibits charging price more than 10% higher than before the declaration of a state or local emergency
- Prohibits eviction of tenant in order to lease to another tenant for higher rent
- Applies to rental housing, hotel accommodations, and other essential consumer goods and services
- Violators of the price gouging statute are subject to criminal prosecution and civil fines

Penal Code Section 396
General Tips for Tenants

- Collect lease and rent receipts and other valuable papers.
  - Include with emergency kit for a quick exit.

- Make list of valuable personal property.
  - List all property that could be lost or damaged in a move, or if the property is shut down.

- Take photos of possessions.
If FEMA representatives come to your home, cooperate and give them the highest defensible value of lost property.

If FEMA does not go door to door, register with FEMA and provide copies of documents evidencing the value of losses.

Write down your case or application number, the date you registered, and the name and title of the person who took the information.
Get proof of your application in writing on official letterhead or official form.

Apply for every available program – it may be confusing with different relief programs working in the same place.

Get the name and title of everyone you speak with and keep a journal including dates and times of contacts.

• Tenant right to return to earth-quake damaged unit after repair under rent control: *Aguirre v. Lee*, 20 Cal. App. 4th 1646 (1993)

• **42 USC §5174** (federal disaster assistance) and **44 C.F.R. § 206.110** (implementing regulations)
• Civil Code section 1932 et seq. (termination of hiring)

• Civil Code section 1940.2 et seq. (habitability issues)

• Civil Code sections 1946, 1946.1, 1946.2 (termination of tenancy)

• Civil Code 1947.12 (rent caps)

• Health and Safety Code section 17920.3 et seq. (substandard buildings, relocation)
Useful Resources

• Tenants Together summary of local rent control ordinances
  • www.tenantstogether.org/resources/list-rent-control-ordinances-city

• National Housing Law Project overview of Federal housing programs
  • www.nhlp.org/resource-center/

• California Tenant Protections site (hosted by ACCE, TechEquity and Code for San Francisco)
  • tenantprotections.org
Thank you for joining us

Have a nice day!