

Representing Consumers and Tenants when Hurricanes or other States of Emergency Happen

Presented by

The Public Interest Law Section (soon to be The Equal Justice Section)
from the Consumer and Tenant Working Group's 2018 Webinar Series

Hosted by: Legal Services of North Florida, Inc.

Wednesday, July 25, 2018

- I. Today's Training - Representing Consumers and Tenants** **12:00 Noon**
1. FEMA - Understanding available benefits and the process for filing a claim
 - a. There has been a natural disaster in your area. Now, what happens?
 - b. What assistance does FEMA provide?
 - c. What is the process for filing a claim with FEMA?
 - d. What are the next steps after a claim is filed?
 2. Landlord/Tenant
 - a. Repairs / Inhabitability
 - i. Who is obligated to repair the damage, and how is that obligation enforced?
 - ii. What are the tenant's rights if a part or the whole unit is rendered uninhabitable?
 - b. Termination of the lease
 - i. Who has the right to terminate the lease, and in what circumstances?
 - ii. How/when is the lease terminated?
 - c. Insurance
 - i. What types of insurance, if any, will cover the tenant's losses/expenses?
 3. Mortgages
 - a. What are the applicable FEMA regs
 - b. How to help homeowners who are already in foreclosure when a hurricane hits
 - c. How to help homeowners who are at risk of default because of a hurricane
 - d. How to work with lenders and services to make sure the insurance proceeds are released to the homeowner
- II. Questions and Answers (Time permitting)** **1:00 p.m.**

Todays' Presenters

Karen Millard, Three Rivers Legal Services

Karen Millard works as a staff attorney for Three Rivers Legal Services. She is working under a disaster relief grant provided by the Florida Bar Foundation. She provides legal assistance ranging from advice to negotiation to full representation in matters including housing, insurance disputes, FEMA appeals and probate to Hurricane Irma storm victims in all stages of the disaster recovery process.

Jeff Haynie, Law Offices of Jeff Haynie, PLLC

From 2004 through 2017, Jeff worked as a full-time staff attorney at Jacksonville Area Legal Aid, Inc. ("JALA"), a non-profit law firm in downtown Jacksonville that provides civil legal services to low-income clients who cannot afford to retain private counsel. While at JALA, Jeff represented many individuals, families, and groups of clients, such as tenant associations. He represented clients in civil litigation in state and federal courts, at trial and appellate levels, and in administrative proceedings. He handled a wide range of cases, including guardianship, landlord/tenant, civil rights, and consumer protection. He successfully litigated against corporations and governmental entities.

While at JALA, Jeff served as one of two co-leaders of a state-wide group of attorneys advocating for low-income tenants in state and federal courts throughout Florida and before the Florida legislature. In that role, he contributed to amicus briefs, drafted legislation and worked with lobbyists to find sponsors and other support for legislation, created educational materials for the public, and trained other attorneys around the state.

Jeff started his own practice in January 2018 to expand into some new areas of law. He is currently handling business litigation, business contracts and transactions, and consumer protection.

Evan Rosen, Law Offices of Evan M. Rosen, P.A.

Evan has been a part of several multi-million dollar and numerous six figure results.

Specifically, in foreclosure defense, Evan has been able to help clients obtain every type of relief available. This includes short sales, principal reductions, deeds-in-lieu of foreclosure, cash for keys, dismissals and winning at trial. Evan utilizes a comprehensive and aggressive approach. Relying on an extensive and ever-expanding knowledge base of all applicable rules of procedure, evidence, debt collection practices and bankruptcy law, Evan routinely uncovers false documents, "robo-signing", servicing errors, misapplication of payments, evidentiary violations, discovery violations, illegal collection practices and more. In some cases, that's enough to make the phone ring with a fair offer on the other side. In others, Evan is also able to prepare a Broker's Price Opinion and educate the bank as to the true fair market value of a property, so they understand that even if they can foreclose, they will be far better off working something out with you. If all attempts to resolve a case fail, or if a client just wants their day in court, then Evan and his team do all that is possible to win – treating the case as if it was their own. Combining hundreds of foreclosure trials as well as numerous jury trials, with all the years

of dedication, training and mentorship, Evan is, as two judges recently said at two large public events, an “excellent trial advocate” and a “wonderful lawyer.” Many other judges have made similar comments.

In a desire to help as many homeowners as possible, Evan also conducts two-day trial workshops around the state designed to help other foreclosure defense lawyers be the best trial lawyers they can be. Day one is a seminar going over the nuances of the evidence code, trial procedure and all the various ways Evan has won foreclosure trials. Day two is mock trials, allowing lawyers to practice some of the skills and techniques Evan outlines on day one. In martial arts, to become a black belt, you must teach others. Trial practice is very similar. Because of all of Evan’s experience handling trials and teaching so many lawyers the art and science of winning a foreclosure defense trial, it’s as if Evan now has a black belt in trial advocacy.

Also, as part of his ongoing diligence and passion for representing clients, Evan is actively engaged with lawyers from around the country in seminars, e-mail list serves and discussion groups to hone legal argument, theory and technique. He is president of a select group of South Florida foreclosure defense attorneys and is an active member of JEDTI (Jurists Engaged in Defense of Title Integrity), a highly selective group of statewide Florida foreclosure defense lawyers. Combining these efforts, his talent, expertise and background with the rest of the firm’s experienced team has helped numerous clients get back on track.

In addition to defending clients, Evan enjoys suing creditors for any number of consumer debt collection practice violations pursuant to several different state and federal statutes as well as helping clients challenge and remove improper negative marks on their credit report through his extensive knowledge of the Fair Credit Reporting Act, Fair and Accurate Credit Transactions Act and other applicable state and federal statutes.

Evan is just as passionate about serving the community at large. He has volunteered as Secretary and Treasurer of the Miami Project for Paralysis, laborer for Habitat for Humanity, and organizer for the Florida Brain Tumor Association and the Greg Wohrle Foundation, a non-profit organization founded in the name of one of Evan’s closest childhood friends, to help those fighting brain cancer. His newest volunteer efforts are in the courtroom as a volunteer with Broward’s Legal Aid Society, helping those who cannot afford a lawyer to fight their foreclosure, find a viable foreclosure alternative and/or file for bankruptcy. He has also assisted in the Southern District pro-se bankruptcy clinic which helps those who cannot afford a lawyer obtain information on bankruptcy. Evan is a member of the American Bar Association, Florida Bar Association, Broward County Justice Association, American Association for Justice, Florida Justice Association, and was a board member of the Broward Hurricane Club. He is also a devoted father and husband.

FEMA – Understanding Available Benefits and the Process for Filing a Claim



KAREN E. MILLARD, ESQ.
THREE RIVERS LEGAL SERVICES



There has been a natural disaster
in your area. Now, what happens?



What assistance does FEMA provide to individuals? Who is eligible for this assistance?



- **Housing Assistance**
- **Other Needs Assistance**



What is the process for filing a claim with FEMA?



- **Options for filing:**

- Online - www.DisasterAssistance.gov
- FEMA app - www.fema.gov/mobile-app
- Call FEMA at 1-800-621-FEMA
- Meet with a FEMA representative at one of the disaster recovery center - <https://www.fema.gov/disaster-recovery-centers> or text DRC and a zip code to 4FEMA

- **Inspection**



What are the next steps after the claim is filed?



- Hopefully, payment is issued. It is limited to an annually adjusted amount based on the Consumer Price Index.
- Denial of benefits -- 60 days to appeal
- Missing information
- Importance of understanding how having insurance may impact your claim
- Small Business Administration



TENANTS' RIGHTS AFTER A NATURAL DISASTER

Jeff Haynie

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REPAIRS / INHABITABILITY

Who is obligated to repair the damage to residential rental property after a natural disaster, and how is that obligation enforced?

What are the tenant's rights if a part or the whole unit is rendered uninhabitable?

Relevant statutes:

83.47

83.51

83.56(1)

83.60

83.63

REPAIRS / INHABITABILITY

This discussion assumes:

- (1) we're talking about damage caused by a storm or something else besides the tenant's negligence, and
- (2) we're talking about a structure owned by the landlord, not a mobile home or other structure owned by the tenant.

THE GENERAL RULES

Under 83.51:

- landlord must comply with any applicable local codes, or, if there are none, must maintain the basic structural soundness required by 83.51(1)(b)
- that obligation can be different (can even be put entirely on the tenant) in a written lease for a single-family home or duplex, but not for other types of properties (e.g., apartments)
- for units other than a single-family home or duplex (e.g., apartments), the landlord must make the additional provisions in 83.51(2)(a), *unless* otherwise provided in a written lease

THE GENERAL RULES

Tenant enforcement of landlord's obligations:

- tenant enforces the landlord's obligations under 83.51 and the lease by withholding rent (83.60(1)(b)) and/or terminating the lease (83.56(1)), but in either case only after giving the landlord written notice and seven days' opportunity to make the needed repairs
- pursuant to 83.60(1)(b), the landlord's failure to comply with obligations under 83.51 or the lease is an absolute defense to an action for eviction for non-payment of rent
- pursuant to 83.56(1), if the cause of the problem is beyond the control of the landlord, and if the landlord is trying to correct it, the tenant may terminate the lease or, if the lease is not terminated, (1) if the unit is uninhabitable and the tenant vacates temporarily, no rent is due during that time, or (2) if the tenant remains in the unit, the rent is reduced "by an amount in proportion to the loss of rental value caused by the noncompliance"

83.63: “CASUALTY DAMAGE”

“If the premises are damaged or destroyed other than by the wrongful or negligent acts of the tenant so that the enjoyment of the premises is substantially impaired, the tenant may terminate the rental agreement and immediately vacate the premises. The tenant may vacate the part of the premises rendered unusable by the casualty, in which case the tenant's liability for rent shall be reduced by the fair rental value of that part of the premises damaged or destroyed.”

- “Casualty” is not defined in this section, nor in the definitions section of the landlord-tenant act, but it generally means something like “disaster”
- The term “casualty damage” is not even found in the text of this section, allowing an argument that the application of this section is not limited to disaster situations
- This is similar to 83.56(1), with the two options of either vacating and owing nothing or remaining and owing only reduced rent

83.63: “CASUALTY DAMAGE”

It seems this section was meant to apply in the event of damage caused by a hurricane or other natural disaster, either instead of or in addition to 83.56(1).

Why is this significant?

- 83.56 is tied to 83.51 and the lease
- Remember, under 83.51, repair obligations can be transferred from the landlord to the tenant in a single-family home or duplex
- But this section is **not** tied to 83.51 or the lease
- Pursuant to 83.47, the rights provided in the landlord-tenant act (like these rights in 83.63) cannot be waived or precluded in a lease

83.63: “CASUALTY DAMAGE”

This means, for example, that even in the case of a single-family home or duplex, where there’s a written lease that transfers all repair responsibility from the landlord to the tenant, the tenant still has these rights provided by 83.63.

In other words, even though that tenant normally has to make all repairs herself and can’t take any action when the landlord refuses to step in and repair, in the event of a natural disaster, that tenant may (1) terminate the lease and vacate without owing anything further or (2) stay and pay reduced rent while part of the unit is affected.

LEASE TERMINATION

General rules under 83.56:

- Already covered tenant's right to terminate the lease for landlord's failure to comply with the lease or 83.51
- Landlord may terminate the lease for tenant's failure to comply with the lease or 83.52

(This assumes there's a lease. If not, then see 83.57.)

Under 83.63:

- Tenant allowed to terminate the lease in the event of casualty damage
- No such provision for landlord (that section *only* gives rights to tenant)

LEASE TERMINATION UNDER 83.63

What if landlord tells tenant to leave because of casualty damage?

- Arguably, landlord just doesn't have that right under 83.63, so landlord must wait until the end of the lease or until landlord has grounds for lease termination under the general rules
- Be aware of 83.44, which imposes an obligation of good faith in the performance and enforcement of every lease
- 83.44, in concert with 83.63, may tilt a court in tenant's favor if landlord seems to be using a disaster unfairly to get tenant out

LEASE TERMINATION

How is the lease terminated?

General rules:

- 83.56 requires seven-day written notice

Under 83.63:

- no notice requirement at all
- “the tenant may terminate the rental agreement and *immediately* vacate the premises”
- tenant should give some written notice and keep copies because of the likelihood of dispute

Mortgage Obligations During/After Natural Disasters

By: Evan M. Rosen, Esq.

www.EvanMRosen.com

“Presidentially-Declared Major Disaster Areas” (PDMDA)

- Benefits discussed herein start with PDMDA
- PDMDAs found at: <https://www.fema.gov/disasters>

FEMA Regulations

44 C.F.R. § 206.110 –

Federal Assistance to Individuals and Households

- (a) “...financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster or emergency, have uninsured or under-insured, necessary expenses and serious needs and are unable to meet such expenses or needs through other means.”
- (b) “No individual or household will receive financial assistance greater than \$25,000 under this subpart with respect to a single major disaster or emergency. FEMA will adjust the \$25,000 limit annually to reflect changes in the Consumer Price Index (CPI) for All Urban Consumers that the Department of Labor publishes.”

44 C.F.R. § 206.110 (continued)

- (c) “One or more types of housing assistance may be made available under this section to meet the needs of individuals and households in the particular disaster situation. FEMA shall determine the appropriate types of housing assistance to be provided under this section based on considerations of cost effectiveness, convenience to the individuals and households and the suitability and availability of the types of assistance. An applicant is expected to accept the first offer of housing assistance; unwarranted refusal of assistance may result in the forfeiture of future housing assistance. Temporary housing and repair assistance shall be utilized to the fullest extent practicable before other types of housing assistance.”
- (d) Begins on date of incident
- (e) Assistance not to exceed 18 months but may be extended
- (f) Assistance not counted as income for other programs
- (g) Assistance exempt from garnishment
- (h) FEMA will not duplicate benefits provided by other sources
- ...
- (f) Certain protection for floods but you must have flood insurance

44 C.F.R. §206.117 – Housing Assistance

- Temporary Assistance – *may* receive:
 - Financial assistance for alternate housing, incl. short-term lodging expenses
 - Direct assistance for housing i.e. FEMA-provided lodging units
- Repairs, Replacement or Construction – *may* receive:
 - Financial assistance for repair of property
 - Financial assistance for buying different replacement property or
 - Financial assistance for construction of new housing
 - All require satisfaction of conditions in §206.113 and more

44 C.F.R. §206.113(a) – Eligibility Factors

FEMA may only provide assistance:

- (1) When the individual or household has incurred a disaster-related necessary expense or serious need in the state in which the disaster has been declared, without regard to their residency in that state;
- (2) In a situation where the applicant has insurance, when the individual or household files a claim with their insurance provider for all potentially applicable types of insurance coverage and the claim is denied;
- (3) In a situation where the applicant has insurance, when the insured individual or household's insurance proceeds have been significantly delayed through no fault of his, her or their own, and the applicant has agreed to repay the assistance to FEMA or the State from insurance proceeds that he, she or they receive later;
- (4) In a situation where the applicant has insurance, when the insured individual or household's insurance proceeds are less than the maximum amount of assistance FEMA can authorize and the proceeds are insufficient to cover the necessary expenses or serious needs;
- (5) In a situation where the applicant has insurance, when housing is not available on the private market;

44 C.F.R. §206.113(a) – Eligibility (continued)

- (6) In a situation where the applicant has insurance, when the insured individual or household has accepted all assistance from other sources for which he, she, or they are eligible, including insurance, when the insured individual or household's insurance proceeds and all other assistance are less than the maximum amount of assistance FEMA can authorize and the proceeds are insufficient to cover the necessary expense or serious needs;
- (7) When the applicant agrees to refund to FEMA or the State any portion of the assistance that the applicant receives or is eligible to receive as assistance from another source;
- (8) With respect to housing assistance, if the primary residence has been destroyed, is uninhabitable, or is inaccessible; and
- (9) With respect to housing assistance, if a renter's primary residence is no longer available as a result of the disaster.

44 C.F.R. §206.113(b) – Ineligibility

FEMA may not provide assistance:

- (1) For housing assistance, to individuals or households who are displaced from other than their pre-disaster primary residence;
- (2) For housing assistance, to individuals or households who have adequate rent-free housing accommodations;
- (3) For housing assistance, to individuals or households who own a secondary or vacation residence within reasonable commuting distance to the disaster area, or who own available rental property that meets their temporary housing needs;
- (4) For housing assistance, to individuals or households who evacuated the residence in response to official warnings solely as a precautionary measure and who are able to return to the residence immediately after the incident;
- (5) For housing assistance, for improvements or additions to the pre-disaster condition of property, except those required to comply with local and State ordinances or eligible mitigation measures;

44 C.F.R. §206.113(b) – Ineligibility (continued)

- (6) To individuals or households who have adequate insurance coverage and where there is no indication that insurance proceeds will be significantly delayed, or who have refused assistance from insurance providers;
- (7) To individuals or households whose damaged primary residence is located in a designated special flood hazard area, and in a community that is not participating in the National Flood Insurance Program, except that financial assistance may be provided to rent alternate housing and for medical, dental, funeral expenses and uninsurable items to such individuals or households. However, if the community in which the damaged property is located qualifies for and enters the NFIP during the six-month period following the declaration then the individual or household may be eligible;
- (8) To individuals or households who did not fulfill the condition to purchase and maintain flood insurance as a requirement of receiving previous Federal disaster assistance;
- (9) For business losses, including farm businesses and self-employment; or
- (10) For any items not otherwise authorized by this section.

44 C.F.R. §206.119 – Financial Assistance to Address Other Needs

- For eligibility of these benefits, must:
 - Apply to US Small Business Administration's Disaster Home loan Program;
and
 - Be declined for such assistance; or
 - Demonstrate that such assistance does not satisfy needs arising from disaster.
- FEMA and State *may* provide miscellaneous benefits, with *specific limitations*:
 - Medical, dental expenses
 - Funeral expenses
 - Personal Property
 - Transportation

44 C.F.R. § 206.120

- States can also apply for grants and administer their own assistance programs

FHA:

HUD has instructed FHA lenders to use reasonable judgment in determining who is an "affected borrower."

Eligibility, Step 1:

Did my home suffer damage in the disaster?

Am I without other resources, such as insurance settlements, to catch up?

Possible options for help:

For borrowers who were already delinquent on their FHA loan – Moratorium.

If disaster is causes default – Lender *may* waive late fees *and more*

Generally, as per HUD Handbook 4000.1, Section III.A.2.r.i.(C), a Mortgagee may initiate a foreclosure for monetary default only *after at least three consecutive full monthly Mortgage Payments are due but unpaid*, and at least one other condition regarding loss mitigation is met.

More info here:

https://www.hud.gov/program_offices/housing/sfh/nsc/qaho0121

VA:

INFORMATION FOR MORTGAGE SERVICERS

Mortgage servicers must check with FEMA to obtain the specific counties and corresponding declaration dates (<https://www.fema.gov/disasters>) along with any amendments to the declaration.

Assistance to Homeowners. VA encourages servicers of guaranteed loans in disaster areas to extend all possible forbearance to borrowers in distress. VA regulations on Prepayments (38 CFR 36.4311), Advances (38 CFR 36.4314), Loan Modifications (38 CFR 36.4315) and Supplemental Loans (38 CFR 36.4359) may be of assistance in appropriate cases. It is the loan holder's responsibility to counsel borrowers concerning assistance that may be available.

Moratorium on Foreclosures. Although the loan holder is ultimately responsible for determining when to initiate foreclosure and complete termination action, VA encourages holders to establish a 90-day moratorium on initiating new foreclosures in the disaster area.

Insurance Requirements. VA regulations (38 CFR 36.4329) require that lenders and holders ensure that homes financed with VA-guaranteed loans be sufficiently insured against hazards. Insurance proceeds are to be applied to the restoration of the security or the loan balance. The burden of proof is upon the holder to establish that no increase in VA's ultimate liability is attributable to failure of the holder to have the property properly insured or properly apply an insurance loss settlement.

Case-specific appraisal, origination and servicing issues may be directed to the appropriate VA Regional Loan Center (http://www.benefits.va.gov/HOMELOANS/contact_rlc_info.asp).

VA (continued):

- More here:
- https://www.benefits.va.gov/homeloans/documents/docs/va_policy_regarding_natural_disasters.pdf

Fannie Mae:

The following table describes the servicer's requirements when it becomes aware that a property securing a mortgage loan has incurred damage as a result of a disaster event.

✓	The servicer must...
	Determine whether the property is adequately insured against any damage in accordance with B-2, Property Insurance Requirements and B-3, Flood Insurance Requirements.
	Ensure that any applicable property insurance claims are filed and settled promptly, and that the property is repaired fully in accordance with B-5-01, Insured Loss Events.
	Follow the requirements in B-5-02, Uninsured Loss Events if there are uninsured losses.

Servicer's Responsibilities When a Borrower Is Affected by a Disaster Event

The following table describes the servicer's requirements when a borrower is affected by a disaster event.

✓	The servicer must...
	Counsel the borrower on the availability of appropriate workout options and federal disaster relief that might be available through FEMA. See Chapter D2-3, <i>Fannie Mae's Home Retention and Liquidation Workout Options</i> for additional information on available workout options.
	Evaluate each mortgage loan that is or becomes delinquent as a result of the borrower incurring damages or expenses related to the disaster event on a case-by-case basis.
	Ensure that the specific action that it takes does not jeopardize Fannie Mae's ability to recover damages under any applicable property insurance policy.
	Contact its Fannie Mae Servicing Representative (see F-4-03, <i>List of Contacts</i>) if it needs assistance in determining how a policy should be applied or if it has determined that a departure from Fannie Mae's policies is warranted.
	Refer to FHA, VA, or RD guidelines to determine appropriate procedures for extending relief to a borrower who has a government-insured or government-guaranteed mortgage loan.

Fannie Mae (continued):

If the servicer has any doubt about the effect of the disaster event on the condition of a property or the borrower's employment or income status, it must suspend any legal proceedings, including foreclosure proceedings, already in process until it can determine the accurate status, and make its final decision on the appropriate course of action based upon its findings. The servicer must contact its Fannie Mae Servicing Representative (see F-4-03, List of Contacts) to obtain written approval before granting a suspension that exceeds 90 days.

The servicer must not initiate or complete foreclosure proceedings related to a property that has been destroyed until it evaluates the economic feasibility of pursuing the foreclosure.

See <https://www.fanniemae.com/content/guide/servicing/d1/3/01.html> (emphasis added).

More information here:

<https://www.fanniemae.com/singlefamily/disaster-assistance>

<http://www.fanniemae.com/portal/about-fm/hurricane-relief.html>

Freddie Mac:

- No late charges in certain circumstances
- No reporting to credit bureaus in certain circumstances
- Forbearance
- “Extend Modification” – temporary mod for those who have not missed more than one payment since disaster occurred
- Capitalization and Extension Modifications (“Disaster Relief Modification”) – can capitalize arrears and extend term

April 2018 guide here:

http://www.freddiemac.com/learn/pdfs/service/disaster_mod.pdf

See more here:

http://www.freddiemac.com/singlefamily/service/natural_disasters.html

From the Trenches...

- What we see during significant storm events
- In addition to PDMDA, there is apparently a second condition impacting foreclosures.
- Driving concern seems to be for property (and money), not people.

Florida Bar CLE Approval Information

Reference Number:	1805434N
Title:	Representing Consumers and Tenants when Hurricanes
Level:	Intermediate
Approval Period:	07/25/2018 - 01/25/2020

CLE Credits

General	1.0
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Certification Credits

Civil Trial	1.0
Condominium and Planned Development Law	1.0
Real Estate	1.0

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