

**Missouri Association of
Trial Attorneys**

**DISASTER LEGAL
SERVICES MANUAL**

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OVERVIEW

Natural disasters victimize thousands of citizens in Missouri and elsewhere every year. In many cases, these people lose everything - their homes, their personal possessions, their important documents, their jobs, and worse, family and friends – leaving their lives in shambles. During these times, the victims of disasters are at their most vulnerable, susceptible to the influence of fraudulent contractors, scam artists, and others seeking to profit from their misfortune. Even those who respond to disaster sites for the purpose of helping victims, such as insurance adjusters and government representatives, cannot always be trusted to represent their best interests.

One of the stated objectives of the Missouri Association of Trial Attorneys (MATA) is “to advance the interests and protect the rights of individuals.” In keeping with that objective, MATA has entered into an agreement with the American National Red Cross to provide legal counseling services to the victims of disasters in the State of Missouri and other states as may be appropriate and/or necessary. The agreement between MATA and the Red Cross contemplates that MATA attorney volunteers will respond in person to the site of disaster as directed by the Red Cross and to assist disaster victims with legal issues and questions that arise as a direct result of the disaster. MATA may also establish and maintain a telephone “hotline” to serve as a backup to its onsite response or as the primary response as may be determined in consultation with the Red Cross.

The terms of the agreement between MATA and the Red Cross are set out in the Memorandum of Understanding between the American National Red Cross and the Missouri Association of Trial Attorneys, dated June 17, 2008, attached to this manual as **Appendix 12**.

OBJECTIVES

The primary objective of MATA's disaster legal services program will be to provide assistance to the victims of natural disasters with legal questions and issues that arise as a direct result of the disaster. Those issues and questions include, but certainly are not limited to, the following:

- Assistance with insurance claims (life, medical, property, etc.).
- Assistance with government relief programs.
- Counseling on landlord-tenant and other housing problems.
- Assistance with home repair contracts.
- Assisting in consumer protection matters, remedies and procedures.
- Counseling on mortgage foreclosure problems.
- Replacement of important legal documents destroyed in a major disaster.
- Referring individuals to local or state agencies that might be of further assistance (e.g., consumer affairs).

The second objective is to provide a visible, physical presence at disaster sites. Such a presence will not only act as a deterrent to those who would otherwise take advantage of disaster victims, but would also give those victims an equal voice in dealing and negotiating with legitimate entities, such as contractors, insurance companies and governmental agencies.

PROCESS OF PROVIDING LEGAL DISASTER SERVICES

1. Pursuant to the Memorandum of Understanding, MATA will activate and deploy teams of volunteers to disaster sites upon request by the Red Cross. The teams will assemble at the site and will set up their operation at the direction of the Red Cross Partner Services and onsite Client Casework teams. The Red Cross Partner Services will share information regarding MATA's response with others on the relief operation.

2. After set up of the appropriate equipment is complete (i.e., tent, tables, chairs, etc.), MATA will assign a person or persons to serve as intake coordinator. The intake coordinator will ensure that each disaster victim provides his name and contact information on the Sign-In and Disclaimer Form, **Appendix 1**. Each victim will also provide his signature indicating that he understands the extreme and difficult circumstances under which services are being provided. It is intended that **Appendix 1** will be used to gather information on every disaster victim who approaches MATA. If the victim's question is a simple one requiring only informal advice, no other form will need to be completed. But if the victim's issue is one which requires more in-depth analysis or involvement, he or she shall also complete the Intake and Disclosure Form, **Appendix 2**, providing MATA with more detailed information. The intake coordinator will be the first contact with disaster victims and will have the victim fill out the Intake, Disclosure and Consent Form, a copy of which is attached to this manual as **Appendix 2**. Upon completion of the Intake and Disclosure Form, if applicable, the intake coordinator will then direct the victim to a volunteer attorney for counseling.

3. You, the volunteer attorney, should use the Intake, Disclosure and Consent Form as a guide to assisting the victim, while understanding as the discussion progresses other legal questions and issues may arise. It is important to remember that the primary objective is to provide the victim with immediate useful legal information that can help him/her embark on the road to recovery with as few future legal difficulties as possible. For the most part, any legal issues unrelated to the disaster or issues which require potentially long-term legal representation should be referred to the local or state legal referral network as appropriate. The contact information for Missouri Legal Referral networks is:

- St. Louis 314-621-6681
- Jefferson City 573-636-3635
- Greene County 417-831-2783

**(Referral services may
require a \$20 fee)**

Kansas Citians should use the Jefferson City number, as it connects to the Missouri Bar referral service.

Free legal services and advice are available to eligible, low-income persons through various legal aid offices, which serve Missouri as follows:

- Legal Services of Eastern Missouri, Inc. 1-800-444-0514 or 314-534-4200
- Mid-Missouri Legal Services Corp. 1-800-568-4931 or 573-442-0116
- Legal Aid of Western Missouri 816-474-6750
- Meramec Area Legal Services 1-800-999-0249 or 573-341-3655
- Legal Aid of Southeastern Missouri 1-800-748-7456 or 573-683-3783
- Legal Aid of Southwest Missouri 1-800-444-4863 or 417-881-1302

Remember, MATA's agreement with the Red Cross strictly prohibits any volunteer attorney from receiving any financial gain from supporting the relief operation.

4. Please remember that even though you are providing these disaster legal services on a volunteer basis, the Missouri Supreme Court Rules relating to attorney conduct still apply to your representation of the victims.

5. After you have provided appropriate legal services within the scope of MATA's agreement with the Red Cross, you will complete the Case Closure Form, a copy of which is attached to this manual as **Appendix 3**, providing a copy to the victim and retaining a copy for MATA's files.

6. **NOTE:** Experience has shown that in some cases a less formal approach may be more expeditious and work just as well in helping the victim with his/her problem. If he/she has a relatively simple question or needs a referral to another agency or organization such as those identified in this manual, it probably doesn't make sense to take the time to fill out the intake and closure forms, particularly if there are many people needing help and time is of the essence. The degree of formality appropriate under the circumstances is a decision that the volunteer attorneys should make on site. However, the Sign-In and Disclaimer Form should be completed with each disaster victim regardless of the simplicity of the victim's problem.

USEFUL INFORMATION IN PROVIDING DISASTER LEGAL SERVICES

1. Governmental Programs

a. FEMA

The Federal Emergency Management Agency (FEMA) is the primary governmental entity responsible for response and recovery assistance in areas covered by a Major Disaster Declaration issued by the President of the United States. In such a case, FEMA programs may work in coordination with state disaster recovery programs. FEMA can be contacted on site or by calling 1-800-621-3362 or the Kansas City Regional office at 816-283-7061. For more information on the disaster declaration process, please review the FEMA Guide To The Disaster Declaration Process And Federal Disaster Assistance, attached to this manual as **Appendix 4**. In cases where there is no Major Disaster Declaration, only state and/or local governmental programs may be involved. Programs funded and/or administered by FEMA include the following:

I. Temporary Housing Assistance

FEMA funds and administers the Temporary Housing program. The Temporary Housing program is designed to help alleviate the suffering imposed by the effects of a disaster by providing disaster applicants with a grant for their housing needs. There are five forms of

Temporary Housing: Lodging Expense Reimbursement, Disaster Housing, Rental Assistance, Manufactured Homes, and Mortgage and Rental Assistance.

(a) Lodging Expense Reimbursement

An eligible applicant may receive a check for the cost of short-term lodging, such as hotel rooms, incurred due to damage or inaccessibility to the residence or an officially imposed prohibition against returning to the residence. Expenditures for food, transportation, telephone, separately billed utilities, and other services are not eligible for reimbursement.

(b) Minimal Repairs Assistance

Applicants eligible for this program will receive financial assistance to help make immediate emergency repairs to live in their residence while permanent repairs are being completed. NOTE: This assistance is not intended to address all of the damages to the home or to restore damaged items to their pre-disaster condition.

(c) Rental Assistance

An eligible applicant will receive financial assistance (based on the fair market rental value in the disaster area) to rent a dwelling for the pre-disaster household to live for a limited time. If the applicant has difficulty finding a place to live, FEMA may provide a listing of available rental properties in the area. Rental assistance is available for up to 18 months based on need, which, in turn, is reviewed and evaluated quarterly.

(d) Manufactured Housing

When rental properties are unavailable, FEMA may provide in-kind assistance in the form of a travel trailer, a manufactured home or other readily fabricated dwelling. Applicants receiving in-kind assistance are not eligible for financial assistance. Manufactured homes can be used as temporary housing for up to 18 months subject to recertification of continuing eligibility.

(e) Mortgage and Rental Assistance (MRA)

When a disaster causes economic injury to an area, there may be substantial changes in household income. Mortgage and Rental Assistance provides a means to keep people in their homes, by assisting with their mortgage or rental payment and preventing foreclosure or eviction. The application period for this program is

up to 6 months after the date of declaration. Mortgage and Rental Assistance is available for up to 18 months based on need.

II. Individual and Family Grant (IFG) Program

The IFG Program is administered by the state to cover necessary expenses and serious needs that cannot be met through other forms of disaster assistance or other means, such as insurance. The state funds 25% of the expenses for this program, while FEMA funds the remaining 75%. This assistance covers repairing/rebuilding of real and personal property, transportation, medical, dental and funeral expenses incurred by applicants as a result of the disaster. The maximum amount for this grant is adjusted each fiscal year and is based on the Consumer Price Index.

III. Cora C. Brown Fund

In 1979, Cora Brown died and bequeathed part of her estate to the federal government to be used as a special fund solely for the relief of human suffering caused by natural disasters. The Cora Brown fund is used for disaster victims who have exhausted all avenues of assistance, but who still have unmet needs. FEMA uses these funds under the authority of 42 U.S.C. § 5201(b) of the Stafford Act and 44 C.F.R. § 206.181.

IV. Disaster Unemployment Assistance (DUA)

DUA provides financial help and employment services to people who are otherwise ineligible for regular state unemployment compensation. DUA provides help for workers and those who are self-employed if they become unemployed as a direct result of a declared major disaster. DUA is funded 100% by FEMA and administered by the Department of Labor through the State Employment Security Agency (SESA). Benefits can extend to 26 weeks after the date of declaration or until the individual becomes re-employed, whichever is earlier.

V. Crisis Counseling (CCP)

The purpose of the Crisis Counseling program is to help relieve any grieving, stress or mental health problems caused or aggravated by the disaster or its aftermath. Funds are provided by FEMA as a grant to state and local mental health agencies. This program is administered by the Center for Mental Health Services of the Substance Abuse and Mental Health Services Administration under the Department of Health and Human Services. Services provided include screening, diagnostic testing, counseling, and outreach services such as disseminating public information and community networking. There are two types of programs offered through CCP:

- **Immediate Services** are intended to enable the state or local agency to respond to the immediate mental health needs of victims of a disaster. This funding is provided for up to 60 days after the date of the disaster declaration.
- **Regular Services** are designed to provide up to 9 months of services to victims of a disaster.

VI. Small Business Administration (SBA)

SBA provides low interest, long-term disaster loans for individual to repair/replace real and personal property, and for non-farm businesses. If SBA determines that an applicant is ineligible for an SBA loan or if the loan amount is insufficient, SBA refers the applicant to FEMA for additional consideration. Borrowers are required to maintain appropriate hazard insurance. Under certain circumstances, flood insurance may also be required. SBA can only approve a loan to an applicant with a reasonable ability to repay the loan.

Other national, state and local voluntary agencies have similar programs and coordinate with the Center for Mental Health Services to reduce or eliminate duplication of efforts.

Because disaster assistance programs for individuals, families and businesses often overlap in their coverage and purpose, federal law prohibits the disbursement of disaster assistance that duplicates assistance from insurance or any other source. Therefore, FEMA has established a policy for preventing and rectifying duplication of benefits under 44 C.F.R. § 206.191. With the exception of “expendable” items such as clothing, linens, and basic kitchenware, FEMA requires that any agency such as voluntary organizations and private insurers provide assistance first. This is a judgment however, that may be difficult, if not impossible, for you to make on site. Therefore, the best practice should be to assist the victim as appropriate in obtaining and completing any applications for assistance through FEMA and provide the victim with the appropriate legal referral contact information should a problem arise later.

Most FEMA/SBA benefits are available only to United States citizens and qualified aliens under 8 U.S.C. § 1601 *et seq.* However, children who were born in the United States to

undocumented aliens qualify for benefits. Also, undocumented aliens are entitled to emergency food and shelter and crisis counseling, which is non-cash assistance. In some cases, you may be called upon to assist the victim in establishing citizenship for immigration status.

b. Missouri SEMA

The Missouri State Emergency Management Agency's (SEMA) Mission according to RSMo Chapter 44.020: "The State Emergency Management Agency is created for "assisting in (the) coordination of national, state, and local activities related to...disaster response, recovery, planning and mitigation" and "This agency shall serve as the statewide coordinator for...the National Flood Insurance Program."

SEMA responds to two types of disasters – natural and man-made. Natural disasters include floods, tornadoes, severe storms, ice and/or snowstorms, fires, as well as earthquakes along the New Madrid Seismic Zone. Man-made disasters, also known as technological emergencies, may include hazardous material incidents, nuclear power plant accidents, other radiological hazards, and terrorism.

Enabling Legislation: The following Code of State Regulations (CSR) govern SEMA's roles and responsibilities for routine business and disaster response:

- 11 CSR 10-11.010 through 11 CSR 10-11.110
- Missouri Revised Statutes Chapter 44.020

SEMA is responsible for developing the State Emergency Operations Plan (SEOP), which includes a Catastrophic Event (earthquake) Annex. The SEOP coordinates the actions of Missouri State Departments and Agencies in the event of any emergency requiring the use of State resources and personnel. SEMA planners work with Missouri's State Departments to develop and maintain Department Emergency Operation Plans. Additionally, SEMA planners participate in planning committees associated with agriculture, terrorism, special needs, schools, and pets in disaster issues.

2. Private Insurance Carriers

Many disaster victims have homeowners and/or automobile insurance that may cover all or part of the victim's losses. It is not uncommon for insurance companies to dispatch claims adjusters to the disaster site to make a determination of coverage and, perhaps, attempt to settle the property damage claim very quickly. While this may be tempting to the victim, he/she is vulnerable to undue influence cause by the duress of the situation. Therefore, you should encourage the victim to obtain a detailed estimate from the insurance adjuster and compare that estimate to two or three estimates from reputable contractors to determine whether it is fair and reasonable. Likewise, discourage the victims from making any snap decisions that may hurt them later. Remember, you are not an expert in determining the cost of necessary repairs and should restrict advice only to taking appropriate steps to determine that a fair evaluation of the damage has been made.

If the victim's home is a total loss, then it may be necessary to advise the victim to take some time to document the value of the home through recent appraisals and/or a comparison of similar properties sold in the area before the disaster. Any photographs of the property before the disaster may be helpful in this regard as well.

In many cases, the value of lost personal property is more difficult to determine. Again, photographs showing personal property may be helpful in establishing their existence, condition and value. If no photo documentation or other documentation such as receipts are available, the victim should be advised to document and/or photograph the remains of his/her personal property to document the claim. Depending on the nature of the disaster, this task may be more or less difficult but any form of documentation prior to the demolition and/or removal of debris would be helpful.

With respect to motor vehicles, any documentation of the value and condition before the disaster would be helpful in determining the reasonableness of the insurance company's evaluation of the damage. If such documentation is unavailable, photographs of the motor vehicle(s) after the disaster, including vehicle identification number, odometer reading and vehicle data plate inside the driver's door is helpful in determining the vehicle's fair market value. In addition, photographs of undamaged portions of the vehicle that may indicate its previous condition may be helpful as well.

To aid in documentation of the damage/loss, you can provide the victim with a Damage Assessment and Inventory Form, a copy of which is attached as **Appendix 5**. Also, in some cases MATA may make disposable cameras available to aid victims in documenting their losses.

Determining whether and to what extent an insurance policy covers a particular loss is often difficult and made more so where the coverage question arises in the aftermath of a disaster. It is likely that victims will not have their insurance policies or other coverage documentation available for review. Regardless of whether the victim has insurance documentation or not, you should avoid giving any opinions on coverage questions. Instead, the focus should be on assisting the victim with steps necessary to document losses, obtaining and comparing estimates and legal referral if a coverage question arises.

3. Independent Contractors

Disaster victims are perhaps most vulnerable to being scammed by unscrupulous contractors who obtain advance monetary payments and then perform incomplete work, shoddy work or no work at all. Your role is to arm the victim with information that will allow him/her to distinguish a reputable contractor from a charlatan and take steps to protect the victim's rights.

The following are several tips that you can provide the victim in dealing with contractors:

- Work with local contractors recommended by friends, family and neighbors.
- Check with the Better Business Bureau serving the disaster area and/or the Missouri Attorney General's Consumer Protection Hotline to check for complaints made against a prospective contractor.

Better Business Bureaus:

- Kansas City 816-421-7800
- St. Louis 314-645-3300
- Springfield 417-862-4222 or www.bbb.org
- Missouri Attorney General Consumer Protection Hotline 1-800-392-8222
- Know MO database – go to www.ago.mo.gov and click on “Know MO”

- Make sure that the prospective contractor appears reputable by looking for such things as a professional looking company vehicle, business cards, pre-printed business cards, a physical business address and the like.
- Be suspicious of any contractor who offers services door-to-door, drives an unmarked vehicle or has out of state license plates, demands full payment in advance, has no business address, just a phone or P.O. Box, has no photo identification and/or uses high pressure sales tactics.
- Look to see if the contractor is listed in local phone directories. If he isn't listed, beware.
- If the contractor is from out of state, check with the Missouri Department of Revenue to see if he has obtained a Transient Employer License, which is required for out of state contractors doing temporary projects in Missouri. Go to www.dor.mo.gov.
- Obtain and verify the contractor's references and try to personally inspect the work that the contractor has performed.
- Require that the contractor produce all licenses under which he operates his business and call the agencies that issued the licenses to confirm their validity and status.
- Do not pay for repair bids. The contractor should do this for free.
- Avoid dealing with any contractor who offers to increase the amount of the damage assessment in order to obtain more money from the insurance company or offers to cut costs by using materials claimed to be "from another job."
- Fraudulent contractors oftentimes pressure the victim into making an immediate decision, claiming that if the victim waits, he/she may be unable to hire a contractor and get the repairs made for weeks or months to come. Scam artists routinely play on the victim's desire to return life to normal as quickly as possible. Always advise the victim not to rush into any decision and that such high-pressure tactics are a "red flag" of problems down the road.
- Do not pay in advance. Never pay a contractor the full contract price before the work is completed and is determined to be satisfactory. A reasonable down payment may be in the range of 20-25% for the acquisition of materials, payable on the initial delivery of those materials.

- Do not pay in cash. Always be suspicious of a contractor who offers a discount if he is paid in cash. Make all payments by check, payable to the contracting company, (not an individual) or by credit card. Either method offers some recourse in the case the contract fails to perform satisfactorily and provides documentation of the payments.

- Require that the contractor prove that he is bonded and insured for damages caused to the victim's property, to other persons, and to the contractor's employees. Then call the insurance company(ies) to confirm the validity and status of the bond and insurance.

- Obtain two or three written estimates that give details about the work to be done, materials, labor charges, and start and finish dates. Then compare those estimates to any estimate obtained from the victim's insurance adjustor.

- Insist on a clear and detailed written contract that gives details about the work to be done, materials, labor charges, and start and finish dates. Also make sure that the contract clearly states that federal and state law allow the buyer to cancel the contract until midnight of the third business day after the day on which the buyer signs the contract where the contract was the result of a home solicitation (door-to-door sale). See 16 C.F.R. § 429.1, § 407.705.1, RSMo (1986). A sample form contract containing suggested provisions is attached as **Appendix 6**.

- The contract should also contain the following elements:
 - The executed contract should have no blank spaces that the contractor could fill in later.
 - All guarantees regarding the contractor's work should be clearly described in the contract as to the scope of the guarantee, the identity of the company responsible for backing the guarantee and the duration of the guarantee.
 - The contractor should be required to obtain all necessary permits and licenses to complete the work described in the contract.
 - The contract should state that modifications to the contract cannot be made without the written consent of both parties prior to starting the specified work.

- The contract should contain a “Holdback Clause” which allows the victim to withhold final payment until sometime after the job’s completion to allow for time to inspect the job. If there are any problems, this will serve as an incentive for the contractor to remedy them.
- The contract should contain a “Liquidated Damages Clause” which obligates the contractor to pay the victim a specified dollar amount for each day that the work is not completed beyond the date completion is required, so long as any such delay is not caused by the fault of the victim or is waived by mutual consent of the parties.
- Insist that the contractor sign a lien waiver, a form of which is attached to this manual as **Appendix 7**. A lien waiver is a receipt that states that the workers and materials suppliers will not look to the victim for money once the contractor has been paid. Beware of any request by a contractor to have the victim sign a statement saying that the victim will cover the cost of materials and labor if the contractor does not pay.
- If the victim decides to cancel a contract within the three-business day window, the cancellation must be done in writing and delivered or mailed by midnight of the third business day following execution. A “business day” excludes Saturdays, Sundays and holidays. A sample form Notice of Cancellation is attached to this manual as **Appendix 8**.

4. Auto Repair

For the most part, the same steps outlined above should be followed with respect to hiring a reputable auto repair company. In addition, you may advise the victim to determine whether the prospective auto repair company is certified by one or more national organizations dedicated to qualify automobile repair, such as National Institute for Automotive Service Excellence, 703-669-6600, www.ase.com; and the American Automobile Association, (AAA), 866-222-2000, www.ouraaa.com.

5. Identity Theft

The loss of personal and financial identification often accompanies major disasters. If the victims' home or business has been damaged, criminals may now have access to documents containing their Social Security Number, or banking and credit card account numbers.

What To Do If Financial Documents Have Been Lost

• Contact Financial Institutions

Close any accounts that have been compromised and place "Stop Payments" on lost checks. Also, cancel all lost credit/debit cards immediately and have new ones issued. The victim should carefully examine all bank and credit card statements for unauthorized use.

• Contact Credit Bureaus

Ask that the account be "flagged" for possible "unauthorized activity" at the victim's request, and that a "victim's statement" be attached. It is recommended that it read "Account closed at consumer's request," instead of "Card lost or stolen." Normally such an alert will remain in the file for seven years. Everyone is entitled to one free credit report every 12 months from each of the three national credit reporting companies. Log onto www.annualcreditreport.com or call 1-877-322-8228 for a free report. If the victim has already gotten a free report, another one can be obtained for about \$10. Each of the credit reporting companies can also be contacted directly.

TRANS UNION:	1-800-680-7289	www.transunion.com
EXPERIAN:	1-888-397-3742	www.experian.com
EQUIFAX:	1-800-525-6285	www.equifax.com

• Report The Loss or Unauthorized Use of Driver's License

Contact the nearest Department of revenue Office which can be identified by going to www.dor.mo.gov and ask that the license be flagged as lost or stolen and have a new license issued. It is a good idea to use a number other than the Social Security Number for the new driver's license.

• Report the Loss or Unauthorized Use of Social Security Number

Report a lost or stolen Social Security Number to the Social Security Administration's Fraud Hotline at 1-800-269-0271.

What To Do If Someone Has Used The Victim's Identity

• Call the Local Police Immediately

Acting quickly is crucial. The victim should report that he/she is a victim of identity theft and get a copy of the police report and keep it for later use.

6. Damaged or Lost Documents

It is important to replace any legal documents that have been damaged or lost. Among those that should be replaced – and the contacts – are:

- Deeds and recorded real estate documents: County’s Recorder of Deeds
- Mortgages and other credit: Lender or financial company
- Leases: Landlord or financial company
- Insurance policies: Insurance company/agent (Contact information is attached to this manual as **Appendix 9**.)
- Wills: If the will is destroyed, you’ll need another.
- Bank accounts, lost checking and savings records, ATM cards and the like. Contact local bank or financial institution or Federal Deposit Insurance Corporation (FDIC) at 1-877-275-3342 or www.fdic.gov.
- Auto Title/Drivers License: Department of Revenue
- Birth Certificate: Vital Statistics Office from county where person was born.
- Social Security Card: local Social Security Administration Office
- Tax Returns: IRS Center
- Other important documents, such as contracts or divorce judgments: Attorney or the county

7. Other Potential Scams

- **Advance Fee Loan Scams:** Beware of loan brokers who guarantee the victim a loan regardless of credit history for the payment of an upfront fee. More likely than not this is a scam in which the broker will take the fee and never be heard from again.
- **Fraudulent Charities:** Beware of telephone or door-to-door solicitation for charity. Many solicitors sound legitimate, but are actually keeping the donations for themselves. It is advisable to make any donations directly to known reputable charitable organizations such as the American National Red Cross or the Salvation Army by hand delivery on site, mail or on line. You can also check the background of a charity by visiting the Web sites of the Missouri Attorney General’s Office, www.ago.mo.gov or www.give.org (Better Business Bureau).
- **Public Adjuster:** Public adjusters are individuals who represent the victim in assessing the value of property damaged. Typically they charge 10-15% of the insurance settlement as a fee for their services. Public adjusters need licenses in most states. Always require that the adjuster show his/her license and then confirm by contacting the Missouri Department of Insurance at 1-800-726-7390 or 573-751-4126. To learn more about public adjusters, go the web site of the National Association of Public Insurance Adjusters, www.napia.com. The

following states do not require licenses: Alabama, Alaska, Arkansas, Idaho, Kansas, Louisiana, Mississippi, Oregon, Tennessee, South Dakota, Virginia and Wisconsin. Always beware of people holding themselves out as a public adjuster who:

- charge a large upfront fee substantially in excess of 10-15%;
 - refer your repair work to a dishonest contractor for a kickback;
 - file false and inflated claims against the victim's insurance policy; and
 - use their position of trust to access the victim's Social Security number and other personal data.
- **Rental Listing Scams:** After a natural disaster, so many people are in need of someplace to live. In a rental listing scam, someone promises to find the victim housing, but asks him/her to pay for the promise in advance. Usually state law requires a prepaid rental listing service to provide a written contract. Read it carefully. Meanwhile, know that con artists may try to charge a fee for the promise of housing that doesn't exist.
 - **Utility Related Scams:** Door-to-door con artists portray themselves as utility workers checking out safety issues. They are really casing the home. The victim should ask for identification before letting anyone in, and confirm by checking with the utility company.
 - **Water Treatment or Purification Devices:** Fraudulent firms may try to sell the victim overpriced or useless water treatment devices by offering to test his/her water for free. Offers to test the tap water in the home for free are almost always part of a sales promotion. No single device can solve all kinds of water problems. Victims should not drink any tap water until the local authorities have said that it is safe to do so.

If the victim is served by on a public water system, the local water-utility office can advise about water safety problems and what to do. The local city or county health department can answer questions about private wells.

- **Price Gouging:** The incidence of price gouging (the sudden, sometimes dramatic increasing for items in demand) following a natural disaster is well documented and can be reported to the Missouri Attorney General at 1-800-392-8222. 15 C.S.R. § 60-8.030 makes price gouging an unfair practice under the Merchandising Practices Act, § 407.020 RSMo, as follows:
 - (1) It is an unfair practice for any person in connection with the advertisement or sale of merchandise to –
 - (A) Take advantage of a person's physical or mental impairment or hardship caused by extreme temporary conditions, and charge a price substantially above the

previous market price of the merchandise in seller's trade area;

(B) Charge within a disaster area an excessive price for any necessity; or

(C) Charge any person an excessive price for any necessity which the seller has reason to know is likely to be provided to consumers within a disaster area.

- **Fake Disaster Officials:** The victim should always ask for identification from any officials who stop at the home or temporary shelter. An official looking shirt, uniform, jacket, etc. is not enough. Demand photo identification and confirm by contacting the agency. Some scam artists claim to be government officials who could help the victim qualify for disaster relief payments for a "processing" fee. Others masquerade as safety inspectors or utility repairmen who say immediate work is required. Still others say they can get FEMA funds for a fee. FEMA does not charge application fees. In fact, no government agency charges application fees.

8. **Landlord Tenant Issues.** Please review the Missouri Landlord-Tenant law attached to this Manual as **Appendix 10**.

LEGAL QUESTIONS FREQUENTLY ASKED BY DISASTER VICTIMS

The following series of short questions and answers is designed to prepare you with an introduction to the types of legal problems that often confront disaster victims. Many of the questions are based on actual victim interviews and the answers are general and based upon information in American Jurisprudence 2d and other broad based legal resources. Thus, you should consult the local rules and Missouri statutes based on the specific facts of the victim's case.

It is hoped that this brief primer will assist you in providing effective legal assistance to disaster victims, regardless of your legal background or specialty.

1. HOUSING

a) My house was damaged and I cannot live in it – do I need to pay my mortgage?

You must pay your mortgage even if your house is damaged and you cannot live in it. However, check with your lender since many companies may offer a grace period of several months to delay payments (although interest may continue to be added).

b) What if I cannot pay my mortgage?

Check with your lender since many companies may offer a grace period of several months to delay payments (although interest may continue to be added). If, however, you have received a

written foreclosure notice as a result of a disaster related financial hardship, you may be eligible for FEMA payments to help you with your mortgage payments.

c) What if I live in a condominium? Do I have to continue paying maintenance fees?

If you live in a condominium and pay maintenance to any type of homeowners' association, you still need to pay your maintenance fees even if your homeowners' association is not fixing the common areas or you do not like the way they are doing repairs. You should attend the homeowners' association meetings to voice your concerns, and talk with other homeowners and members of the board about your complaints. A group of you may want to seek legal advice. However, if you just stop paying maintenance, you could lose your home to foreclosure.

d) I have homeowner's insurance, but I was told it will take months for an adjuster to look at my house and then it will take longer for a check to be issued – am I eligible for any type of assistance because my house needs lots of expensive repairs and I'm not even sure I can live there until it's fixed?

If you have homeowner's insurance, you will most likely be eligible for money for living expenses while you cannot live in your house. You need to contact your insurance company. If you did not have homeowner's insurance then you may be eligible for assistance under the Individual and Family Grant (IFG) program through FEMA to pay for necessary repairs to essential parts of your home. You may apply for IFG by telephone at 1-800-621-3362.

e) My apartment is damaged. What can I do?

You have the right to reduce rent in proportion to the damage to the unit. If the unit is unlivable you can move out. In either case, you should send a certified letter to your landlord notifying him/her of your actions. You may contact your local bar association or legal aid for more information on how to do this.

f) All my personal property was destroyed when the roof fell in on the place I rent – what help can I get?

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

g) What if I do not have any insurance on my property?

If you did not have renter's insurance, see if your landlord had insurance to cover your belongings. If your losses are not covered by any insurance policy, you may be able to get IFG money for replacement of necessary items of personal property. You may apply for these benefits through FEMA at 1-800-621-3362.

h) My landlord told me to move out the next day because he wants the apartment for his daughter who lost her house in the tornado, and told me if I wasn't out, he'd change the locks – do I have to move?

Missouri law does not allow a landlord to just lock you out or turn off the utilities or to use any other “self help” means to get you to leave. If you have a valid written lease agreement, the landlord cannot evict you. In any event, the landlord must file an eviction action in court and, then you only have to move out after the judge in your eviction case enters a final judgment of eviction. Furthermore, the landlord must first give you some type of written notice to move before the landlord can file an eviction case against you in court. For the specific provisions of Missouri law, please refer to **Appendix 10**. If the landlord does lock you out, you can call the police, and, you should consult a lawyer regarding an action for damages.

i) My apartment is so bad I cannot live in it and I am going to move. I want my security deposit returned – what are my rights?

If you have a written lease, read your lease to see what it says. If you do not have a written lease, or your lease does not say anything about deposits, then the landlord must either return your deposit within 30 days after you move out or send you a letter, by certified mail, within thirty (30) days, saying why he will not return your deposit and he or she must list the reasons for keeping the deposit.

j) Must I continue paying rent even though my apartment or office has been completely destroyed or severely damaged?

Under the common law rule, a tenant is no longer liable for rent after complete destruction of the premises, but if the premises are only partly destroyed or damaged, liability for rent continues unabated. This rule has been modified in some jurisdictions, including Missouri to permit apportionment or abatement of rent or to permit the tenant to terminate any obligations if the premises are tendered uninhabitable, at least with regard to residential property.

In addition to judicial modification of this rule, some states have enacted statutes which relieve tenants of liability under such circumstances, but these statutes vary greatly. Of course, a valid written lease may control the respective liabilities of the properties when disaster strikes, particularly as to commercial property.

If it is determined that a tenant does not have the right to be relieved of liability for rent, in whole or in part, the tenant must generally exercise that right with proper notice to the landlord and within a reasonable amount of time. If so, the tenant should be entitled to a refund of any security deposit advanced and be given a reasonable opportunity to retrieve personal property. See 49 Am. Jur. 2d Landlord and Tenant §§ 281-283, 591-593, 600-604.

k) Can I sue my landlord for injuries I suffered in my apartment or office during the disaster?

Where the injury results from the disaster itself and not from defects in the demised premises which the landlord may be obligated to repair, the landlord is not liable for such injuries. As such, there is no implied promise by the landlord that no harm will come to the tenant from a flood, earthquake, tornado and the like while on the premises. See 57A Am. Jur. 2d Negligence § 42.

l) Is the damage to my home covered under my insurance policy?

If your insurance company denies coverage, you may need to consult an attorney for long term representation. Generally, however, hazard insurance (i.e., homeowners' policies or other fire and extended coverage policies) from the private sector generally does not cover flood damage. It may cover water damage inside the home but not damage from floods or surface water, which is specifically excluded. Windstorm insurance will normally be limited to greater-than-normal wind conditions.

The Federal government provides coverage for flooding under the National Flood Insurance Program (NFIP). People can buy policies from any state licensed local agent.

Even if the policies extend coverage to the type of disaster damage that occurred, they may limit it to losses directly resulting from the disaster. But courts have generally found coverage if the covered risk was the efficient cause, if not the only cause, of the loss and even if the other concurrent causes are otherwise expressly excluded from coverage. See 43 Am. Jur. 2d Insurance §§ 468-473.

Your insurance policy determines your coverage. If you do not have your policy, contact your insurance company by calling your agent or local claims office. You can also get your insurance company's contact information from the Missouri Department of Insurance at 1-800-726-7390 or online at www.insurance.mo.gov.

m) May I sue the person from whom I bought my home for not telling me about the possibility of flooding?

If an affirmative misrepresentation was made by the seller concerning the possibility of flooding, an action for fraud may be maintained, assuming all the other elements of fraud are present. A more difficult situation arises in cases of silence regarding the fact of possible flooding. Generally, mere failure to disclose a fact known by the vendor is not fraud. By contrast, active concealment of that fact (e.g., by painting over water marks on the basement walls) is actionable. Moreover, failure to disclose possible flooding will support a fraud claim in those circumstances where the law imposes a duty on the vendor to speak (e.g., where a confidential or fiduciary relationship exists or where one party has superior knowledge or means of knowledge). See 37 Am. Jur. 2d Fraud and Deceit §§ 144-146.

n) Does my automobile insurance cover damage to my car resulting from the disaster?

Normally, this type of damage will be covered under the comprehensive policy coverage, although the particular language and exclusions of the policy will control. Even if an exclusion from comprehensive coverage exists for damage cause by flood, wind, etc., coverage may exist under a collision policy if the disaster and event causing the damage could be construed as a collision. Courts have reached mixed results on this issue. See 7 Am. Jur. 2d Automobile Insurance §§ 167-171, 176-182.

Your insurance policy determines your coverage. If you do not have your policy, contact your insurance company by calling your agent or local claims office. You can also get your insurance

company's contact information from the Missouri Department of Insurance at 1-800-726-7390 or online at www.insurance.mo.gov.

o) Can I sue my neighbor whose property ran into or fell on my property during the disaster?

The general rule is that a person is not liable for injuries or damages caused by a disaster or an "Act of God" where there is no fault or negligence. Thus, there can only be liability of the neighbor where there is concurrent negligence which was, in fact, the proximate cause of damage. See 57A Am. Jur. 2d Negligence §§ 11, 15, 37, 42.

p) What can I do with the property of my neighbor which the disaster carried over onto my land?

When personal property is carried away (e.g., by a flood) and comes to rest on the land of another, it still remains the property of the original owner and the original owner may enter and retrieve it. If the landowner refuses to let the original owner enter or appropriates the property for the landowner's use, the original owner of the personal property will have an action against the landowner.

On the other hand, the landowner, as an involuntary bailee, has the right to possession of the property against all others, save the true owner, has no obligation to preserve the property and may move the property if necessary to use the land, provided such action is taken in a reasonable manner. See 1 Am. Jur. 2d Abandoned, Lost, Etc., Property §§ 24-27.

2. INSURANCE

a) How can I preserve my claims & protect my right to repayment from insurance coverage?

If you have any insurance policy which you think may cover your damage, whether it is a homeowner's, renters, or car insurance policy, call your agent, broker, or insurance company as soon as possible, request a copy of your insurance policy and report your loss. Also, make your claim in writing. Most insurance companies will give you an e-mail address or fax number to send claims. Do this even if you are not sure that there is coverage or if you do not know if the claim will exceed the deductible. Make sure you write down the name of the person you speak to and the claim number they will give you. Document your losses as indicated on pages 10 and 11.

If you cannot get through to your insurance company by telephone, write them a letter telling them of your loss and keep a copy of it. If you cannot find the insurance policy, contact your agent, broker or insurance company. If you cannot stay in your home, make sure you give the insurance agent or representative your new address and telephone number.

b) What if I live in a condominium?

If you own a condominium, you should look at both the coverage provisions in your association insurance policy, and the coverage under your individual unit coverage owner's insurance policy.

c) How do I get an insurance adjuster out to my home to assess the damage?

You should request the insurance company to send an adjuster to look at your property. It is best if this request is in writing. If necessary, you should contact the Missouri Department of Insurance at 1-800-726-7390 or online at www.insurance.mo.gov.

d) What can I do to prepare the insurance adjuster?

If circumstances allow, make a list of all property damaged or destroyed, take pictures, collect names, addresses and telephone numbers of witnesses, obtain repair estimates, keep a record of expenses, such as alternative housing, etc., and locate original bills and receipts for lost items. Submit these along with your claim to the insurance company. You may use the Damage Assessment and Inventory Form we have supplied to you.

e) What if I cannot wait for the insurance adjuster?

Some insurance policies provide for reimbursement for temporary housing relocation costs while your home is being repaired and for car rental costs while your car is being repaired or replaced. Check your policy or call your insurance company.

If your situation is desperate, make sure that you let the insurance company know and, if the insurance company agrees that there is coverage, ask for an advance payment toward your losses. Due to the extreme amount of damage caused by a tornado, insurance companies may recommend you start repairing the damaged property before the adjuster's visit. You should get the company's permission before doing so. Many companies will also give you an emergency advance to cover some repair costs.

f) What if the insurance company offers to settle?

You should CONSULT AN ATTORNEY before signing any release or waiver and before cashing any check from the insurance company which might be deemed full and final payment of your claim. Before you settle with the insurance company, be aware of the full extent of your damage and the full value of your claim. It may be important for you to get estimates or to actually have the work completed before you agree to a specific cost figure.

g) What if the insurance company denies my claim or offers me less than I think I am entitled to receive?

You should demand that the insurance company give you its reasons IN WRITING for denying coverage or limiting your claim, and consult an attorney. Missouri law limits the amount of time you have to file a lawsuit against the insurance company, so you should consult an attorney as soon as your insurer denies your claim. If you do not file suit in time, you may be prevented from receiving any reimbursement.

h) What if my insurance does not cover all of the damages to my home or personal property?

You may be eligible for benefits under the FEMA program if you are unable to pay for repair or replacement of essential parts of your home or essential personal property. See the FEMA section of this manual.

3. IMMIGRATION

a) Do I need to be a U.S. resident or citizen to apply for emergency disaster relief?

You qualify for non-cash FEMA disaster programs even if you do not have a legal immigration status. Receipt of other benefits depends on immigration status.

b) Will I be considered a public charge and denied residency if I apply for Emergency Disaster Relief?

No. Acceptance of Emergency Disaster Relief will not be considered public cash assistance preventing you from becoming a resident. You will not be classified as a public charge solely because you have accepted emergency disaster assistance.

c) If I lost my “green card” in the disaster, how can I get a replacement?

You need to fill out a **Form I-90** and file it at your local immigration office. You can get the immigration Form I-90 from INS by calling 1-800-870-3676.

d) If I lost my work permit in the disaster, how can I get a replacement?

You need to fill out immigration **Form I-765**. If you have a photocopy of your lost work permit, attach it to the I-765. Also include a photocopy of any applications or documents which entitle you to receive a work permit, such as application of asylum, suspension of deportation, or adjustment of status.

e) Do I need to let INS or the immigration court know that I have moved as a result of the disaster?

If you have a pending case, you are required to inform the immigration court of any change in address or telephone within 5 days of moving.

4. DISASTER RELIEF (FEMA)

a) What kind of benefits does FEMA provide?

The Federal Emergency Management Agency (FEMA) is an umbrella organization that coordinates state and federal government benefits for disaster victims, and determines eligibility for Temporary Housing Assistance (THA). Call FEMA at 1-800-621-FEMA (3362).

b) Who is eligible for Temporary Housing Assistance (THA)?

You must show that your primary residence has been made unlivable or that you are no longer living there because of the disaster. If you have insurance you must also show that you have made reasonable efforts to obtain insurance benefits and that you have not been successful. You must also agree to repay FEMA to the extent that you later get insurance benefits.

c) What kind of help can I get under THA?

Temporary Housing Assistance usually takes the form of a check to cover the cost of rent, mortgage or essential home repairs. You may apply for rental or mortgage assistance if you have received written notice of eviction for nonpayment of rent or mortgage. This kind of assistance may be provided for a period not to exceed 18 months for homeowners and 3 months for renters.

Money for home repairs is available for the purpose of quickly repairing or restoring the essential living condition. Residences must be able to be made livable by repairs within 30 days.

d) Who is eligible for Individual and Family Grants (IFG's)?

IFG is available to individuals and to families who have disaster related necessary expenses or serious needs, and who do not have adequate assistance from other sources such as insurance.

e) What kind of help can I get under the IFG program?

IFG is a grant to cover necessary expenses or serious needs for essential items or services in the following categories:

- For the repair, replacement or rebuilding of owner occupied housing;
- To provide clothing, household items, furnishing, & appliances, tools & equipment required as a condition of employment;
- To replace or repair vehicles or provide public transportation;
- To pay for funeral expenses.

f) Will IFG benefits affect my eligibility for SSI, TANF, Medicaid, or Food Stamps?

No. Individual and Family Grant benefits may not be counted either as income or resources in determining your eligibility for any income-tested programs supported by the federal government.

g) If I owe money can my IFG benefits be taken by my creditor?

No. IFG benefits are exempt under federal law from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release, or waiver. They also cannot be assigned or transferred away from the recipient to someone else.

h) Do I have to be a U.S. citizen to qualify for IFG benefits?

No. Most legal residents, refugees, asylees, parolees for at least 1 year, and Cuban/ Haitian entrants are eligible to receive IFG benefits. In order to obtain money to repair an owner occupied residence, you must show that you are the owner of the home and that you reside there.

i) Who is eligible for Small Business Administration (SBA) loans?

In order to qualify for a low interest loan, you must show that your home or business was damaged by the disaster, and that you have the ability to repay the loan.

j) What kind of help can I get from the SBA loan program?

SBA provides low interest loans for repairs.

5. UNEMPLOYMENT COMPENSATION

If a victim becomes unemployed because his employer's business was destroyed or closed because of the disaster, or lost his job because his house or car was destroyed, or because he was no longer able to get to work due to the disaster, he may be entitled to receive Unemployment compensation (UC) benefits or Disaster Unemployment Assistance (DUA).

a) Where do I apply for Unemployment Compensation & Disaster Unemployment Assistance?

You may apply for UC benefits on the internet at www.dolir.mo.gov or call:

- Kansas City Regional Claims Center 816-889-3101
- St. Louis Regional Claims Center 314-340-4950
- Springfield Regional Claims Center 417-895-6851
- Jefferson City Regional Claims Center 573-751-9040
- Outside Local Calling Area 1-800-320-2519

If you are applying for DUA call FEMA at 1-800-621-FEMA (3362) to get a registration number or go to <http://www.fema.gov/assistance/index.shtm> for more information.

b) When should I go to apply for UC or DUA?

For either regular UC benefits or DUA benefits, you should apply as soon as possible since you may have to wait about four weeks before your first check is sent to you.

(c) How do I know if I am eligible for UC benefits?

You are eligible for regular UC benefits if you are unemployed. To qualify for unemployment benefits filed on January 1, 2008 or later a worker must:

- Have worked in covered employment and earned wages of at least \$1,500 in one quarter of the base period and there must be wages in the other quarters of the base period which total at least \$750 to establish a minimum claim. A worker's base period is the 12-month period consisting of the first four of the last five completed calendar quarters before the beginning date of the claim. The total wages in the base period must be at least one and one-half times the worker's high quarter wages. The worker may still be qualified if he or she was wages in at least two quarters of the base period and the total of these wages equal \$18,000, AND
- Be out of work due to no fault of his/her own.

(d) How do I know if I am eligible for DUA benefits?

Even if you are not eligible for regular UC benefits, you may still be eligible for Disaster Unemployment Assistance benefits. DUA is available to unemployed U.S. Nationals and qualified aliens who worked or were self-employed, if they:

- Worked or were self-employed in or were scheduled to begin work or self-employment in an area declared as a federal disaster area; and
- Can no longer work or perform services because of physical damage or destruction to the place of employment as a direct result of a disaster; and
- Establish that the work or self-employment they can no longer perform was their primary source of income; and
- Do not qualify for regular unemployment insurance benefits from any state.
- Cannot perform work or self-employment because of an injury as a direct result of the disaster; or
- Became the breadwinner or majority supporter of a household because of the death of the head of the household.

Suffering monetary loss due to damage to property or crops does not automatically entitle an individual to DUA.

6. PUBLIC EDUCATION

a) Do I have to send my children to school?

Yes. If the schools are open in your county, unless there is a good reason for not sending them to school, you must send your children to school. You should listen closely to the public announcements. You will be given directions as to whether schools are open and the procedures for sending and picking up your children. If you are uncertain what to do, you should contact your child or children's school.

7. FAMILY ISSUES

a) Will my child be able to get emergency medical care if I cannot be reached by telephone?

Yes. A licensed doctor may provide emergency medical care or treatment to any minor who has been injured in an accident or who is suffering from an acute illness, disease, or condition if delay in providing the care will endanger the health or physical well-being of the minor. The care must be provided in a licensed facility. Care may also be provided in the pre-hospital setting by paramedics and emergency medical care technicians. This will apply if:

- The minor is unable to provide the name of his parent(s), guardian or legal custodian; or
- The parent(s), guardians, or legal custodian cannot be immediately located by telephone at their place of residence or business.

b) My child is living with a relative. Will my child be able to get medical care if I cannot be reached by telephone?

No. Only a parent or a legal guardian can consent to non-emergency medical care. It is highly recommended that you execute a medical authorization form to allow anyone with whom your child is currently residing to approve of non-emergency medical care. A copy of such form is attached hereto as **Appendix 11**.

- c) I have a child in my home that was placed by the Department of Social Services or the Juvenile Court. What will happen during an emergency if the child requires medical care?**

You should contact Missouri Department of Social Services, Family Support Division at 573-751-3221 or your local county DSS office on the internet at www.dss.mo.gov. for specific instructions as to how the child is to receive medical care during an emergency.

- d) How can I get counseling for myself or my family?**

There are numerous providers of counseling services on an ongoing basis. After a natural disaster, additional providers will be available. Information on disaster counseling is usually made available through public information announcements after the disaster. You may contact FEMA at www.fema.gov. or call 1-800-621-3362 or contact the Missouri Department of Mental Health to find the DMH Access Crisis International Hotline in your county on the internet at www.dmh.mo.gov/cps/acimap.htm. You should also check with hospitals and other mental health agencies in your community in reference to the availability and cost of disaster counseling.

8. EXPEDITED FOOD STAMPS

- a) What are expedited food stamps?**

Expedited food stamps are available to very needy persons within 7 calendar days of application. The expedited process is part of the regular food stamp program application process.

- b) How do I know if I am eligible for expedited food stamps?**

To be eligible for expedited food stamps you must show one of the following:

- you or your household have no more than \$150 in monthly income before taxes and \$100 or less in cash or in bank accounts; or
- your basic shelter and utility expenses are greater than your present income and resources combined.

You only have to verify that you are who you say you are by showing documents bearing your name, or by having someone say they know you.

- c) Do I have to meet any other eligibility requirements?**

You will be asked for verification of your immigration status, your social security number, your income and your expenses at the time you apply. However, you will be eligible for expedited food stamps within 7 days after you apply even if all of the verification cannot be obtained.

- d) If I do not qualify for expedited food stamps, can I still get regular food stamps?**

Yes. Your food stamp application must be processed and you must receive a written decision within 30 days stating whether you are eligible, and the amount of benefits to which you are

entitled. If you are denied benefits, but you believe you are entitled to them, contact the Legal Referral Services office closest to you.

9. TEMPORARY ASSISTANCE PROGRAM – CASH ASSISTANCE

a) Could I be eligible for TAP even if I never was before?

Yes. If you live in the same household as your minor children and you are poor, you may be eligible for TAP. You should apply at the Missouri Department of Social Services, Family Support Division at 573-751-3221 or your local county DSS office on the internet at www.dss.mo.gov.

10. MEDICAID (Mo Health Net) BENEFITS

a) Could I be eligible for Mo Health Net now even if I never was before?

Yes. If you are pregnant, have young children, are disabled, elderly, or an unemployed head of household, you and your family may be eligible for Mo Health Net benefits depending on your immigration status, income, resources, and the size of your household. You should apply at the Family Support Division in which you reside. The contact information for each office can be found at www.dss.mo.gov. Or you can call the Division of Social Services at 1-888-275-5908.

11. SOCIAL SECURITY AND SSI BENEFITS

a) What if I did not receive my latest Social Security or SSI benefits?

If you live within the disaster area and you did not receive your Social Security or SSI benefits, you should go to your local post office to see if your check is there. If the check is lost call 1-800-772-1213, from 7 a.m. to 7 p.m. Monday through Friday.

b) Could I be eligible for SSI now even if I never was before?

If you are blind, over the age of 65, or disabled and cannot perform any kind of work, you should apply for benefits at the Social Security office nearest you. You can also start an application by calling the Social Security Administration's toll free telephone number 1-800-772-1213. Once Social Security has all the necessary documentation, such as proof of earnings, and medical evidence of disability, it will send you a written decision. If you are denied and you think you are eligible, you should file a request for reconsideration within 60 days of the date of the initial decision. If you are denied again, you should request a hearing and contact a nearby Legal Referral Service.

c) Are there any other benefits besides old age and disability benefits for which I might be eligible?

Yes. You may be eligible for other kinds of Social Security or SSI benefits, on your own account, or on the account of another if you want to retire, or you are an aged or disabled widow or widower, or you are the dependent family member of a disabled, retired or deceased worker. If you think you are eligible for any of these benefits, you should contact the Social Security Administration and apply.

ETHICAL CONSIDERATIONS

The Missouri Rules of Professional Conduct remain fully in force for volunteer attorneys providing Disaster Legal Services. Because of the difficulty of the circumstances under which the legal services may be provided, therefore it is important to carefully limit the scope of the advice and counsel to that which is compliant with the Rules. It is important to remember that there is only so much you can do to assist a disaster victim in a situation where information is incomplete and time is short. At the same time, you should give the victim the best advice and assistance possible considering those constraints.

While all of the Rules apply, there are a number of rules that may be particularly relevant in providing Disaster Legal Services. Following is a review and discussion of those rules.

Rule 4-6.1 Voluntary Pro Bono Publico Service

“A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations...”.

Comment

The rule recognizes the responsibility of all lawyers to provide public interest legal services. The MATA/Red Cross partnership offers an opportunity to fulfill the intent and spirit of the rule, while also improving the image of the legal profession in the eyes of the public.

Rule 4-1.1 Competence

“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

Comment

The scope of the representation must be limited to advice and assistance that can be given competently under the circumstances. As such, the volunteer attorney should:

- Limit assistance to problems directly caused by the disaster;
- Limit advice only to that which can be given based on verifiable facts;
- Refer longer term legal needs to appropriate legal referral services; and
- Carefully explain the provisions of the Disaster Legal Services Intake, Disclosure and Consent Form, attached as Appendix 2, as follows:

“The undersigned applicant(s) for Volunteer Disaster Legal Services understand(s) the extreme and difficult circumstances under which the services are being provided and that information necessary to full, complete and accurate advice may not be available at the time the legal services are provided. The applicant(s) also understand(s) that the attorney providing the volunteer disaster legal services will give his/her best effort to supply the applicant(s) with accurate and helpful legal advice and may refer the applicant(s) to other agencies for additional or long term legal or other assistance. Understanding and being fully apprised of these circumstances, the undersigned applicant(s) hereby consent(s) to accept volunteer disaster legal services.”

Rule 4-1.2 Scope of Representation

“(c) A lawyer may limit the scope of representation if the client gives informed consent in a writing signed by the client to the essential terms of the representation and the lawyer’s limited role. Use of a written notice and consent form substantially similar to that contained in the comment to this Rule 4-1.2 creates the presumptions:

- (a) the representation is limited to the lawyer and the services described in the form, and
- (b) The lawyer does not represent the client generally or in any matters other than those identified in form.”

Comment

Use the Disaster Legal Services Intake, Disclosure and Consent Form to describe the precise legal problems and/or questions presented by the victim(s). Execution of the form by the victim(s) should suffice to limit the scope of representation under Rule 4-1-2.

Rule 4-1.7 Conflict of Interest

(a) Except as provided in Rule [4-1.7\(b\)](#), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under Rule [4-1.7\(a\)](#), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

Comment

The volunteer attorney should always be cognizant of the possibility of a conflict in providing Disaster Legal Services. There are circumstances under which an attorney can represent a client with a conflict as long as the parties to the conflict give informed consent in writing. Please use the Disaster Legal Services Waiver of Conflict and Informed Consent, attached as Appendix 12. See also, Rules 4-1.8, Prohibited Transactions and 4-1.9, Duties to Former Clients.

Rule 4-2.2 Intermediary

“ A lawyer may act as intermediary between clients if:

- (1) The lawyer consults with each client concerning the implication of the common representation, including the advantages and risks involved, and the effect on the attorney-client privileges, and obtains each client’s consent to the common representation;
- (2) The lawyer reasonably believe that he matter can be resolved on terms compatible with the clients’ best interests, that each client will be able to make adequately informed decisions in the matter and that there is little risk of material prejudice to

the interests of any of the clients if the contemplated resolution is unsuccessful;
and

- (3) The lawyer reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the client.”

Comment

This rule was omitted from the 2008 Rules of Professional Conduct, but does not seem to contradict any of the other existing rules, nor is there any prohibition against an attorney acting as intermediary. The guidance offered by this rule may be helpful in providing volunteer legal services.

Rule 4-2.1 Advisor

“In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client’s situation.”

Comment

This rule is particularly applicable to providing Disaster Legal Services where much of the advice and assistance may be more of a practical, rather than legal nature. Common sense is always a fundamental aspect of providing effective advice and counsel.

Rule 4-4.3 Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. **The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.**

Comment

The volunteer attorney may have contact with other, potentially adverse parties who are unrepresented by counsel such as contractors, insurance adjustors, and the like. The rule requires that the attorney disclose his/her interest in the matter and resolve what he/she knows or should know is any misunderstanding by the unrepresented person as to that interest.

Appendix 1

Sign-In and Disclaimer Form

MISSOURI ASSOCIATION OF TRIAL ATTORNEYS SIGN-IN SHEET

Location:

Date:

The undersigned applicant(s) for Volunteer Disaster Legal Services understand(s) the extreme and difficult circumstances under which the services are being provided and that information necessary to render complete and accurate advice may not be available at the time the legal services are provided. The applicant(s) also understand(s) that the attorney providing the volunteer disaster legal services will give his/her best effort to supply the applicant(s) with accurate and helpful legal advice, but that such advice is strictly limited to the legal problems/questions which are directly related to the immediate disaster, is short term in nature, and no particular outcome is promised. The attorney may refer the applicant(s) to other agencies for additional or long-term legal or other assistance.

Name	Address	Phone	E-Mail

Appendix 2
Intake and Disclosure Form

**DISASTER LEGAL SERVICES
INTAKE, DISCLOSURE AND CONSENT FORM**

(Legal Services are delivered under terms of agreement between the Missouri Association of Trial Attorneys and the American National Red Cross)

Date: _____

Name of Applicant(s): _____

Current Address: _____
street city county zip

Current Phone Number(s) Home _____ Work _____ Cell _____

E-mail Address: _____

Pre-Disaster Address (if different): _____
street city county zip

Description of Legal Problems / Questions (use additional pages if necessary): _____

**DISCLOSURE AND CONSENT FOR
VOLUNTEER DISASTER LEGAL SERVICES**

The undersigned applicant(s) for Volunteer Disaster Legal Services understand(s) the extreme and difficult circumstances under which the services are being provided and that information necessary to full, complete and accurate advice may not be available at the time the legal services are provided. **The applicant(s) also understand(s) that the attorney providing the volunteer disaster legal services will give his/her best effort to supply the applicant(s) with accurate and helpful legal advice, but that such advice is strictly limited to the legal problems/questions described above, which are directly related to the immediate disaster, is short term in nature, and no particular outcome is promised. The attorney may refer the applicant(s) to other agencies for additional or long term legal or other assistance.** Understanding and being fully apprised of these circumstances, the undersigned applicant(s) hereby consent(s) to accept volunteer disaster legal services.

Applicant

Date

Applicant

Date

Disposition (use additional pages if necessary)

Volunteer Attorney

Date

Appendix 3
Case Closure Form

DISASTER LEGAL SERVICES CASE CLOSURE FORM

(Legal services are delivered under terms of agreement between MATA and FEMA)

Date Form Completed:

Name of Applicant(s):

Attorney who provided assistance (print):

Name: _____

Date of assistance:

Amount of time spent providing assistance:

Was the applicant referred to a qualified legal referral service? Yes No

If yes, please explain:

Legal advice given/other notes:

Volunteer Attorney

Date

Appendix 4

FEMA Guide to the Disaster Declaration Process & Federal Disaster Assistance



FEMA

Office of Legislative Affairs
202-646-4500

A GUIDE TO THE DISASTER DECLARATION PROCESS AND FEDERAL DISASTER ASSISTANCE

Local and State governments share the responsibility for protecting their citizens from disasters, and for helping them to recover when a disaster strikes. In some cases, a disaster is beyond the capabilities of the State and local government to respond.

In 1988, the Robert T. Stafford *Disaster Relief and Emergency Assistance Act*, 42 U.S.C. §§ 5121-5206, was enacted to support State and local governments and their citizens when disasters overwhelm them. This law, as amended, establishes a process for requesting and obtaining a Presidential disaster declaration, defines the type and scope of assistance available from the Federal government, and sets the conditions for obtaining that assistance. The Federal Emergency Management Agency (FEMA), now part of the Emergency Preparedness and Response Directorate of the Department of Homeland Security, is tasked with coordinating the response.

This paper explains the declaration process and provides an overview of the assistance available.

— THE DECLARATION PROCESS —

The Stafford Act (§401) requires that: "All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State." A State also includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The Marshall Islands and the Federated States of Micronesia are also eligible to request a declaration and receive assistance.

The Governor's request is made through the regional FEMA/EPR office. State and Federal officials conduct a preliminary damage assessment (PDA) to estimate the extent of the disaster and its impact on individuals and public facilities. This information is included in the Governor's request to show that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the local governments and that Federal assistance is necessary. Normally, the PDA is completed prior to the submission of the Governor's request. However, when

an obviously severe or catastrophic event occurs, the Governor's request may be submitted prior to the PDA. Nonetheless, the Governor must still make the request.

As part of the request, the Governor must take appropriate action under State law and direct execution of the State's emergency plan. The Governor shall furnish information on the nature and amount of State and local resources that have been or will be committed to alleviating the results of the disaster, provide an estimate of the amount and severity of damage and the impact on the private and public sector, and provide an estimate of the type and amount of assistance needed under the Stafford Act. In addition, the Governor will need to certify that, for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will comply with all applicable cost-sharing requirements.

Based on the Governor's request, the President may declare that a major disaster or emergency exists, thus activating an array of Federal programs to assist in the response and recovery effort.

— ASSISTANCE AVAILABLE —

Not all programs, however, are activated for every disaster. The determination of which programs are activated is based on the needs found during damage assessment and any subsequent information that may be discovered.

FEMA/EPR disaster assistance falls into three general categories:

- **Individual Assistance** — aid to individuals and households;
- **Public Assistance** — aid to public (and certain private non-profit) entities for certain emergency services and the repair or replacement of disaster-damaged public facilities;
- **Hazard Mitigation Assistance** — funding for measures designed to reduce future losses to public and private property.

Some declarations will provide only individual assistance or only public assistance. Hazard mitigation opportunities are assessed in most situations.

A summary of each of these programs follows. Because program complexities require lengthy explanations, the discussion that follows is simply an overview.

INDIVIDUAL ASSISTANCE

Individuals And Households Program

The Individuals and Households Program (IHP) is a combined FEMA/EPR and State program. When a major disaster occurs, this program provides money and services to people in the declared area whose property has been damaged or destroyed and whose losses are not covered by insurance. In every case, the disaster victim must register for assistance and establish eligibility. The toll-free telephone registration number is 1-800-621-FEMA (or TTY 1-800-462-7585 for the hearing or speech impaired). FEMA/EPR (or the providing agency) will verify eligibility and need before assistance is offered.

What Types of Assistance Are Provided?

The IHP - Housing Assistance assures that people whose homes are damaged by disaster have a safe place to live. The IHP - Other Needs Assistance (ONA) provides financial assistance to individuals and households who have other disaster-related necessary

expenses or serious needs and do not qualify for a low interest loan from Small Business Administration (SBA). These programs are designed to provide funds for expenses that are not covered by insurance. They are available only to homeowners and renters who are United States citizens, non-citizen nationals, or qualified aliens affected by the disaster. The following is a list of the types of assistance available through this program and what each provides.

Temporary Housing - homeowners and renters receive funds to rent a different place to live or a temporary housing unit when rental properties are not available.

Repair - homeowners receive grants to repair damage from the disaster that is not covered by insurance. The goal is to make the damaged home safe and sanitary.

Replacement - under rare conditions, homeowners receive limited funds to replace their disaster damaged home.

Permanent Housing Construction - homeowners and renters receive direct assistance or a grant for the construction of a new home. This type of assistance occurs only in very unusual situations, in insular areas or remote locations specified by FEMA/EPR where no other type of housing is possible.

Other Needs Assistance (ONA) - applicants receive grants for necessary and serious needs caused by the disaster. This includes medical, dental, funeral, personal property, transportation, moving and storage, and other expenses that FEMA/EPR approves. The homeowner may need to apply for a SBA loan before receiving assistance.

Small Business Administration Disaster Loans

The U.S. Small Business Administration (SBA) can make federally subsidized loans to repair or replace homes, personal property or businesses that sustained damages not covered by insurance. The Small Business Administration can provide three types of disaster loans to qualified homeowners and businesses:

- (1) **home disaster loans** to homeowners and renters to repair or replace disaster-related damages to home or personal property,
- (2) **business physical disaster loans** to business

owners to repair or replace disaster-damaged property, including inventory, and supplies; and

- (3) **economic injury disaster loans**, which provide capital to small businesses and to small agricultural cooperatives to assist them through the disaster recovery period.

For many individuals the SBA disaster loan program is the primary form of disaster assistance.

Disaster Unemployment Assistance

The Disaster Unemployment Assistance (DUA) program provides unemployment benefits and re-employment services to individuals who have become unemployed because of major disasters. Benefits begin with the date the individual was unemployed due to the disaster incident and can extend up to 26 weeks after the Presidential declaration date. These benefits are made available to individuals not covered by other unemployment compensation programs, such as self-employed, farmers, migrant and seasonal workers, and those who have insufficient quarters to qualify for other unemployment compensation.

All unemployed individuals must register with the State's employment services office before they can receive DUA benefits. However, although most States have a provision that an individual must be able and available to accept employment opportunities comparable to the employment the individual held before the disaster, not all States require an individual to search for work.

Legal Services

When the President declares a disaster, FEMA/EPR, through an agreement with the Young Lawyers Division of the American Bar Association, provides free legal assistance to disaster victims. Legal advice is limited to cases that will not produce a fee (i.e., these attorneys work without payment). Cases that may generate a fee are turned over to the local lawyer referral service.

The assistance that participating lawyers provide typically includes:

- Assistance with insurance claims (life, medical, property, etc.)
- Counseling on landlord/tenant problems
- Assisting in consumer protection matters, remedies, and procedures

- Replacement of wills and other important legal documents destroyed in a major disaster

Disaster legal services are provided to low-income individuals who, prior to or because of the disaster, are unable to secure legal services adequate to meet their needs as a consequence of a major disaster.

Special Tax Considerations

Taxpayers who have sustained a casualty loss from a declared disaster may deduct that loss on the federal income tax return for the year in which the casualty actually occurred, or elect to deduct the loss on the tax return for the preceding tax year. In order to deduct a casualty loss, the amount of the loss must exceed 10 percent of the adjusted gross income for the tax year by at least \$100. If the loss was sustained from a federally declared disaster, the taxpayer may choose which of those two tax years provides the better tax advantage.

The Internal Revenue Service (IRS) can expedite refunds due to taxpayers in a federally declared disaster area. An expedited refund can be a relatively quick source of cash, does not need to be repaid, and does not need an Individual Assistance declaration. It is available to any taxpayer in a federally declared disaster area.

Crisis Counseling

The Crisis Counseling Assistance and Training Program (CCP), authorized by §416 of the Stafford Act, is designed to provide supplemental funding to States for short-term crisis counseling services to people affected in Presidentially declared disasters. There are two separate portions of the CCP that can be funded: immediate services and regular services. A State may request either or both types of funding.

The **immediate services** program is intended to enable the State or local agency to respond to the immediate mental health needs with screening, diagnostic, and counseling techniques, as well as outreach services such as public information and community networking.

The **regular services** program is designed to provide up to nine months of crisis counseling, community outreach, and consultation and education services to people affected by a Presidentially declared disaster. Funding for this program is separate from the immediate services grant.

To be eligible for crisis counseling services funded

by this program, the person must be a resident of the designated area or must have been located in the area at the time the disaster occurred. The person must also have a mental health problem which was caused by or aggravated by the disaster or its aftermath, or he or she must benefit from services provided by the program.

PUBLIC ASSISTANCE

Public Assistance, oriented to public entities, can fund the repair, restoration, reconstruction, or replacement of a public facility or infrastructure, which is damaged or destroyed by a disaster.

Eligible applicants include State governments, local governments and any other political subdivision of the State, Native American tribes and Alaska Native Villages. Certain private nonprofit (PNP) organizations may also receive assistance. Eligible PNPs include educational, utility, irrigation, emergency, medical, rehabilitation, and temporary or permanent custodial care facilities (including those for the aged and disabled), and other PNP facilities that provide essential services of a governmental nature to the general public. PNPs that provide "critical services" (power, water--including water provided by an irrigation organization or facility, sewer, wastewater treatment, communications and emergency medical care) may apply directly to FEMA/EPR for a disaster grant. All other PNPs must first apply to the Small Business Administration (SBA) for a disaster loan. If the PNP is declined for a SBA loan or the loan does not cover all eligible damages, the applicant may re-apply for FEMA/EPR assistance.

As soon as practicable after the declaration, the State, assisted by FEMA/EPR, conducts the Applicant Briefings for State, local and PNP officials to inform them of the assistance available and how to apply for it. A Request for Public Assistance must be filed with the State within 30 days after the area is designated eligible for assistance. Following the Applicant's Briefing, a Kickoff Meeting is conducted where damages will be discussed, needs assessed, and a plan of action put in place. A combined Federal/State/local team proceeds with Project Formulation, which is the process of documenting the eligible facility, the eligible work, and the eligible cost for fixing the damages to every public or PNP facility identified by State or local representatives. The team prepares a Project Worksheet (PW) for each project. Projects fall into the following categories:

- Category A: Debris removal
- Category B: Emergency protective measures
- Category C: Road systems and bridges
- Category D: Water control facilities
- Category E: Public buildings and contents
- Category F: Public utilities
- Category G: Parks, recreational, and other

For insurable structures within special flood hazard areas (SFHA), primarily buildings, assistance from FEMA/EPR is reduced by the amount of insurance settlement that could have been obtained under a standard NFIP policy. For structures located outside of a SFHA, FEMA/EPR will reduce the amount of eligible assistance by any available insurance proceeds.

FEMA/EPR reviews and approves the PWs and obligates the Federal share of the costs (which cannot be less than 75 percent) to the State. The State then disburses funds to local applicants.

Projects falling below a certain threshold are considered 'small.' The threshold is adjusted annually for inflation. For fiscal year 2003, that threshold is \$53,000. For small projects, payment of the Federal share of the estimate is made upon approval of the project and no further accounting to FEMA/EPR is required. For large projects, payment is made on the basis of actual costs determined after the project is completed; although interim payments may be made as necessary. Once FEMA/EPR obligates funds to the State, further management of the assistance, including disbursement to subgrantees is the responsibility of the State. FEMA/EPR will continue to monitor the recovery progress to ensure the timely delivery of eligible assistance and compliance with the law and regulations.

Hazard Mitigation

Hazard Mitigation refers to sustained measures enacted to reduce or eliminate long-term risk to people and property from natural hazards and their effects. In the long term, mitigation measures reduce personal loss, save lives, and reduce the cost to the nation of responding to and recovering from disasters.

Two sections of the Stafford Act, §404 and §406, can provide hazard mitigation funds when a Federal disaster has been declared. In each case, the Federal government can provide up to 75 percent of the cost, with some restrictions.

Through the Hazard Mitigation Grant Program (HMGP), authorized by §404 of the Act, communities can apply for mitigation funds through the State. The State, as grantee, is responsible for notifying potential applicants of the availability of funding, defining a project selection process, ranking and prioritizing projects, and forwarding projects to FEMA for funding. The applicant, or subgrantee carries out approved projects. The State or local government must provide a 25 percent match, which can be fashioned from a combination of cash and in-kind sources. Federal funding from other sources cannot be used for the 25 percent non-federal share with one exception. Funding provided to States under the Community Development Block Grant program from the Department of Housing and Urban Development can be used for the non-federal share.

The amount of funding available for the HMGP under a disaster declaration is finite and is limited to 7.5 percent of FEMA/EPR's estimated total disaster costs for all other categories of assistance (less administrative costs). Section 322 of the Disaster Mitigation Act of 2000 emphasizes the importance of planning in reducing disaster losses. States will be required to develop a State Mitigation Plan that provides a summary of the hazards facing them, an assessment of the risks and vulnerabilities to those hazards, and a strategy for reducing those impacts. These plans will be required by November 1, 2004 as a condition of non-emergency assistance under the Stafford Act, and must be reviewed and updated every three years. States may choose to develop an Enhanced State Mitigation Plan in order to receive an increased amount of 20 percent for Hazard Mitigation Grant Program funding. By November 1, 2004, local jurisdictions also must develop mitigation plans in order to be eligible for project grant funding under the Hazard Mitigation Grant Program. In addition, States may use a set-aside of up to five percent of the total HMGP funds available for mitigation measures at their discretion. To be eligible, a set-aside project must be identified in a State's hazard mitigation plan and fulfill the goal of the HMGP, this is, to reduce or prevent future damage to property or prevent loss of life or injury.

Eligible mitigation measures under the HMGP include acquisition or relocation of property located in high hazard areas; elevation of floodprone structures; seismic rehabilitation of existing structures; strengthening of existing structures against wildfire; dry floodproofing activities that bring a structure into compliance with minimum NFIP requirements and State or local code. Up to seven percent of the HMGP funds may be used to develop State and/or local mitigation

plans.

All HMGP projects, including set-aside projects, must comply with the National Environmental Policy Act and all relevant Executive Orders. HMGP grants cannot be given for acquisition, elevation, or construction purposes if the site is located in a designated SFHA and the community is not participating in the NFIP.

FEMA/EPR's primary emphasis for HMGP funds, where appropriate, is the acquisition and demolition, relocation, elevation, or floodproofing of flood damaged or floodprone properties (non-structural measures).

- **Acquisition and demolition:** Under this approach, the community purchases the flood-damaged property and demolishes the structure. The property owner uses the proceeds of the sale to purchase replacement housing on the open market. The local government assumes title to the acquired property and maintains the land as open space in perpetuity.
- **Relocation:** In some cases, it may be viable to physically move a structure to a new location. Relocated structures must be placed on a site located outside of the 100-year floodplain, outside of any regulatory erosion zones, and in conformance with any other applicable State or local land use regulations.
- **Elevation/Floodproofing:** Depending upon the nature of the flood threat, elevating a structure or incorporating other floodproofing techniques to meet NFIP criteria may be the most practical approach to flood damage reduction. Floodproofing techniques may be applied to commercial properties only; residential structures must be elevated. Communities can apply for funding to provide grants to property owners to cover the increased construction costs incurred in elevating or floodproofing the structure.

Funding under §406 that is used for the repair or replacement of damaged public facilities or infrastructure may be used to upgrade the facilities to meet current codes and standards. It is possible for mitigation measures to be eligible for funding under both the HMGP and §406 programs; however, if the proposed measure is funded through §406, the project is not eligible for funds under the HMGP as well.

Appendix 5

Damage Assessment and Inventory Form

Missouri Association of Trial Attorneys

Volunteer Disaster Legal Services

DAMAGE ASSESSMENT AND INVENTORY FORM

AREA	Damaged (M=Minor) (S=Severe)	Destroyed	Not Damaged	Personal Property Inventory (describe each item and note damage) (m=minor, s=severe, d=destroyed)
Exterior				
Front Door				
Rear Door				
Side Door				
Lighting Fixtures				
Bell or chimes				
Side walks on property				
Driveway				
Fence/Block walls				
Windows / screens				
Awnings				
Patio cover				
Exterior				
Front				
Sides				
Rear				
Eaves				
Balcony/Deck				
Pool				
Pool Decking				
Built-in BBQ				
Garage				
Overhead door				

AREA	Damaged (M=Minor) (S=Severe)	Destroyed	Not Damaged	Personal Property Inventory (describe each item and note damage) (m=minor, s=severe, d=destroyed)
Exterior				
Automatic Door Operator				
Electrical outlets				
Wiring				
Lighting Fixtures				
Access doors				
Fire door to interior				
Windows				
Fire wall to interior				
Ceiling/Rafters				
Gas line				
Slab floor				
Ventilation openings				
Entry hall				
Walls				
Ceiling				
Lighting Fixtures				
Doors				
Windows				
Electrical Outlets				
Hand railings				
Stairs				
Floor				
Heat/Air Regulator				
Hallway				
Walls				
Ceiling				
Doors				

AREA	Damaged (M=Minor) (S=Severe)	Destroyed	Not Damaged	Personal Property Inventory (describe each item and note damage) (m=minor, s=severe, d=destroyed)
Exterior				
Lighting fixtures				
Windows				
Floor				
Electrical outlets				
Bedrooms				
Walls				
Ceiling				
Lighting Fixtures				
Doors				
Exhaust Fan				
Windows				
Toilet				
Tub faucet				
Sink faucet				
Shower faucet				
Shower faucet				
Shower enclosure				
Traps and Drains				
Bath Tub				
Cabinets				
Heating Fixtures				
Use this section of the form for each bathroom.				
Den or Family Room				
Floor				
Walls				
Ceiling				
Switches and Outlets				

AREA	Damaged (M=Minor) (S=Severe)	Destroyed	Not Damaged	Personal Property Inventory (describe each item and note damage) (m=minor, s=severe, d=destroyed)
Exterior				
Lighting fixtures				
Doors				
Windows				
Closet				
Fireplace				
Use this section of the form for the living room, dining room and all other interior rooms.				
Kitchen				
Floor				
Ceiling				
Walls				
Light fixtures				
Doors				
Drain				
Garbage Disposal				
Dishwasher				
Stove/oven				
Hood/vents				
Trash compactor				
Built-in microwave				
Sink/faucet				
Windows				
Cabinets				
Countertops				
Miscellaneous: Also check the following areas for signs of damage: cracks, separation or misalignment.				

AREA	Damaged (M=Minor) (S=Severe)	Destroyed	Not Damaged	Personal Property Inventory (describe each item and note damage) (m=minor, s=severe, d=destroyed)
Exterior				
Chimney				
Foundation				
Fireplace				
Steps				
Water Heater				
Roof				
Attic				
Heating and air conditioning system				
Electrical system meters and boxes				
Gas meter				
Water meter				

Notes: _____

Appendix 6

Sample Form Contract and Change Order

COMMERCIAL AND/OR RESIDENTIAL CONTRACTING AGREEMENT

This is a legally binding contract; If not understood, please seek competent advice.

1. PARTIES: THIS AGREEMENT is made by and between _____
(hereinafter the "General Contractor") and _____ (hereinafter the
"Owner", whether one or more).

2. REAL ESTATE: In consideration of the mutual pledges and covenants contained herein,
and subject to the conditions set forth herein, General Contractor agrees to perform
services as described in the "Scope of Work", on the following described real estate,
COMMONLY KNOWN AS:
Address: _____
Telephone (Work) _____ (Home) _____
Description of work to be performed (attach Scope of Work if applicable) **Attached**
Scope of Work (should contain a detailed description of all work to be performed) _____

3. TOTAL PRICE: (subject to adjustment as provided herein): \$ _____
The Total Price shall be paid as follows:
 - a. EARNEST MONEY to be deposited with the General Contractor on or before
commencement of the construction, and which may be used by the General
Contractor for construction of the improvements, in the amount of: (no more than
25% of the total contract price) \$ _____

 - b. ADDITIONAL AMOUNT PAYABLE (This is a progress payment-usually due when
work is 2/3 completed.)
Outlined as follows: _____

(No more than 25% of the contract price) \$ _____

 - c. AMOUNT PAYABLE TO THE GENERAL CONTRACTOR at the time the job is
substantially completed. (No more than 25% of total contract.) \$ _____

 - d. OTHER (Any change order or supplemental charges.)

 - e. UPON SATISFACTORY COMPLETION of work as set forth in paragraph 12,
payment in full is to be made to the General Contractor within _____ days of
demand. Any follow-up items of work are to be completed under the terms of the
General Contractor's warranty. (Remainder of contract price.) \$ _____

4. COMPLETION DATE: The work to be performed under this contract as described in the
attached "Scope of Work" will be completed on or before the _____ day of
_____, 20____, unless such date is changed due to the mutual agreement of the
parties or due to delay(s) set forth in paragraph 11.

5. OWNERS DUTIES: To provide adequate utilities (electricity, water, etc.) for the agreed upon work (unless unavailable); to advise the General Contractor of any condition of the property that affects the General Contractor's ability to perform; to provide in a timely fashion all documents necessary for the permit application to be processed; to perform no work on the project without a written agreement from the General Contractor. Owner shall notify his insurance agent of the execution of this agreement and obtain any necessary riders to his current policy to cover owner's interest and liabilities during the construction process. Owner may not solicit General Contractor's employees on subcontracting to perform any additional work without the express written consent of the General Contractor.
6. HAZARDOUS MATERIAL: This proposal does not provide for the removal of any hazardous material as defined by state or federal regulations, including (but not limited to) asbestos materials, lead based paint, hydrocarbonous substances, radon, etc. Should the General Contractor suspect the presence of any hazardous materials, the owner shall, at the owner's sole expense and not as any part of the deduction of this contract price, have the premises inspected for hazardous materials prior to work commencement. General Contractor may terminate all work pending determination of the nature of materials involved. General Contractor reserves the right to remove all employees and subcontractors from the premises until all such materials have been removed.
7. HIDDEN, CONCEALED, AND UNFORESEEABLE CONDITIONS: The parties agree that, in the event that General Contractor discovers a condition requiring an additional cost, they shall proceed as follows: 1) GENERAL CONTRACTOR SHALL VERBALLY NOTIFY THE OWNER IMMEDIATELY TO EXPEDITE AGREEMENT AS TO THE CHARGE TO CORRECT OR CURE SUCH CONDITION AND PROVIDE A WRITTEN ESTIMATE AS SOON AS PRACTICABLE; 2) THE PARTIES MUST AGREE TO SUCH EXTRA CHARGES, OR TO A RESOLUTION METHOD, OR THIS CONTRACT MAY BE CANCELLED BY THE GENERAL CONTRACTOR. For the purpose of definition, "hidden, concealed, and unforeseeable conditions" shall mean a condition not readily observable to a prudent contractor inspecting the subject property for the purpose of performing this contract.
8. EXTRAS: Any additional work or materials desired by the owner shall be agreed upon in writing with a properly executed Change Order and such extras shall become a part of this contract. Unless otherwise agreed, extras shall be paid for as performed. General Contractor shall advise owner at the time of the agreement as to any additional time requirements.
9. REQUIREMENT OF PUBLIC BODIES: Any changes, alterations or extras from the drawing or specifications which may be required by a public body, utility or inspector shall constitute an extra and shall be paid for the same way as any other extra.
10. ORAL AGREEMENT: Agreements, statements, representations, pledges and/or promises that are not incorporated as a portion of this written contract will not be performed. No agreements, statements, representations, pledges and/or promises made by either

employees or subcontractors providing materials and/or services as a part of this contract that are not incorporated as a portion of this written contract will be performed.

11. DELAY: General Contractor shall not be responsible for delays caused by events beyond his control, including: strikes, wars, acts of God, riots, and government regulations or restrictions. Delays caused by owner's failure to make material selections or by the performance by contract of extras (as outlined in EXTRAS paragraph) SHALL BE EXCUSABLE DELAYS.
12. FINAL INSPECTIONS AND LIENS: Upon notification by the General Contractor of substantial completion of the work, the owner and the General Contractor will inspect the work performed, and at that time the owner will prepare a punch list that identified any incomplete work or deficiencies in workmanship or materials. The owner may retain the remaining unpaid portion of the contract price until the punch list items are complete. Completion of the punch list items must be made within _____ days from the date of the punch list preparation. When the punch list items are completed, the owner will pay the General Contractor the balance of the contract price within _____ days of the demand. At that time, the General Contractor will deliver to the owner a release of all liens.
13. LIQUIDATED DAMAGES: The General Contractor agrees to pay owner \$ _____ per day for every day the contract is not completed after the completion date set forth in this contract, due to any reason not identified in paragraph 10.
14. INSURANCE: General Contractor agrees to maintain all necessary forms of insurance to protect the owner from liability for any occurrence arising from the performance of this contract. General Contractor agrees that he shall cover his own employees for workers compensation and general liability and that all forms of insurance carried thereunder shall be with reputable companies licensed to do business in this locality.
15. WARRANTIES: The General Contractor guarantees the work will meet trade standards of good workmanship. The General Contractor warrants that any defects and deficiencies in the work performed by the General Contractor or any subcontractor under this contract, will be corrected by the General Contractor within a reasonable time of notification of the defect or deficiency. The General Contractor will make every effort to blend existing textures, colors, and planes, but exact duplication is not guaranteed. The General Contractor warrants that materials of good quality will be selected. The General Contractor will maintain all manufactures' warranties. The owner is limited to the manufactures' warranties for defects in the manufacture of materials. All General Contractor's warranties are limited to a period of no more than _____. The General Contractor's warranties are limited to the cost of labor and materials only, and exclude ordinary wear and tear or abuse by others. The General Contractor is responsible for honoring this warranty, whether the defect or deficiency was caused by the General Contractor or a subcontractor.

- 16. SUBCONTRACTORS: General Contractor may select subcontractors as required to complete this contract. Owner acknowledges that various portions of the work may be performed by subcontractors. Any subcontractor selected by the General Contractor shall have all requisite licensing for the work to be performed. It shall be the duty of the General Contractor to use reasonable care in the selection of subcontractors. The General Contractor shall require all subcontractors to possess such types of insurance in force as are required to hold harmless and indemnify the owner from any claim for injuries or property damages by any agent or employee of those subcontractors.

- 17. **OWNER'S RIGHT OF CANCELLATION**: If this contract was entered into as a result of a home or door-to-door solicitation by the General Contractor, owner has the right to cancel this transaction at any time prior to midnight of the third business day after the date of this contract. The term "business day" means any day except Saturday, Sunday and legal holidays. Authority: § 407.705 RSMo; 16 CFR § 429.1.

- 18. APPLICABLE LAW: This contract shall be governed by the laws of the State of Missouri.

- 19. SEVERABILITY: If any portion of this agreement is found invalid or unenforceable by any court, the remaining provisions shall remain in force between the parties.

 Authorized Agent for General Contractor

 Owner

 Date

 Owner

Change Order

Construction Company

Address

City, State, ZIP

Phone Number

Date: _____

Owner: _____

Contractor: _____

Project name: _____

Change order number: _____

Original contract date: _____

You are directed to make the following changes in this contract:

The original contract sum was: _____ \$

Net amount of previous change orders: _____

Total original contract amount plus or minus net change orders: _____

Total amount of this change order: _____

The new contract amount including this change order will be: _____

The contract time will be changed by the following number of days: () Days

The date of completion as of the date of this change order is: _____

Contractor:

Owner:

Company name _____

Name _____

Address _____

Address _____

City, State, Zip _____

City, State, Zip _____

Date _____

Date _____

Signature _____

Signature _____

Appendix 7
Lien Waiver

LIEN WAIVER

State of _____
County of _____

The undersigned _____ (General Contractor) hereby releases, waives, and quitclaims rights to a construction lien in the amount of \$_____ for improvements to, or materials furnished to, the property described as _____ through the date of _____.

The undersigned warrants that all laborers and subcontractors employed by it, and all suppliers from which it has acquired materials, have been paid their respective portion of prior claims, and that none of such laborers, subcontractors, or suppliers have any claim of lien against the project through the date of _____.

This waiver is conditioned upon full satisfaction of the amount shown above.

Signed on this ___ day of _____, 20__.

Signature: _____ (Authorized Agent of General Contractor)

Address: _____

Appendix 8

Sample Form Notice of Cancellation

NOTICE OF CANCELLATION

TO:

General Contractor

Address, City, State, Zip Code

FROM:

Owner(s)

Address, City, State, Zip Code

This is my (our) notice to you that I (we) am/are CANCELLING THE CONTRACT entered into on _____, 20____, under the authority of § 407.705, R.S.Mo. and 16 CFR § 429.1. By signing below, I (we) certify that this Notice was delivered to you or was deposited in the U.S. Mail properly addressed and postage prepaid, before midnight of the third business day after the day on which the contract was signed, excluding Saturday, Sunday and legal holidays.

Owner

Owner

Date

Appendix 9

Insurance Company/Agent Contact Information

CLAIMS INFORMATION

[ACE USA](#) 1-800-433-0385

[ACUIITY](#) 1-800-242-7666

[Allianz of America, Inc](#) (Fireman's Fund) 1-888-347-3428

[American Family Home Insurance Company](#) 1-800-692-6326

[Ameriprise](#) 1-800-872-5246

[American International Group](#) Auto – 1-888-244-6163, Homeowners – 1-888-760-9195

[Allstate Insurance Company](#) 1-800-255-7828

[Atlantic Mutual Companies](#) 1-800-945-7461

[Chubb Group Of Insurance Companies](#) 1-800-252-4670

[Erie Insurance Group](#) 1-800-367-3743

[Farm Bureau](#) 1-877-322-5246 (in Missouri)

[Farmers Group, Inc.](#) 1-800-435-7764

[Geico](#) Auto - 1-800-861-8380 Home 1-800-841-3005 Flood/Mobile Home 1-800-841-3005

[Grange Insurance](#) 1-800-445-3030

[Hanover Insurance Group, Inc.,](#) 1-800-628-0250

[Hartford Financial Services Group, Inc.](#) Auto/Home 1-866-574-4833 (AARP) 1-877-805-9918

[Liberty Mutual Insurance Group](#) 1-800-225-2467

[Nationwide](#) 1-800-421-3535

[MetLife Auto & Home](#) 1-800-854-6011

[Progressive](#) 1-800-776-4737

[Safeco Corporation](#) 1- 800-332-3226

[Selective Insurance Group](#) 1-866-455-9969

[Shelter](#) 1-800-743-5837

[St. Paul Travelers](#) 1-800-252-4633

[State Farm](#) 1-866-761-4036, 918-621-3056

[USAA](#) 1-800-531-8722

[Unitrin P/C Insurance Group](#) (Kemper's Auto and Home) 1- 877-506-4222

[Westfield Group](#) (Illinois) 1-866-937-2663

INDUSTRY LINKS

A.M. BEST

<http://www.ambest.com>

A.M. Best Company is a leading source of insurance industry information. This website allows access to general industry information, as well as information relative to the financial strength of insurers throughout the industry. Best's Ratings are recognized as the leading benchmark for assessing insurers' financial condition.

INDEPENDENT INSURANCE AGENTS AND BROKERS OF AMERICA

<http://www.independentagent.com>

The nation's oldest and largest independent agent association was founded in 1896 by a small group of local fire agents. The association now represents 300,000 agents and their employees. IIAA represents more than half of all the independent insurance agencies in the country.

INSTITUTE FOR BUSINESS & HOME SAFETY (IBHS)

<http://www.ibhs.org>

The Institute for Business & Home Safety (IBHS) is a nonprofit organization that engages in communication, education, engineering and research in an effort to reduce deaths, injuries, property damage, economic losses and human suffering caused by natural disasters.

INSURANCE ACCOUNTING & SYSTEMS ASSOCIATION

<http://www.iasa.org>

The Insurance Accounting and Systems Association is the world's largest member company insurance organization with over 1,700 property and casualty, life, reinsurance, and health care member companies. Through volunteer, cooperative effort it promotes the study and development of modern practices and procedures applicable to insurance accounting and systems.

INSURANCE FRAUD BUREAU

<http://www.ifb.org>

The Insurance Fraud Bureau of Massachusetts is a multifaceted investigative agency dedicated to the systematic elimination of fraudulent insurance transactions. Wholly funded by the insurance industry in Massachusetts the IFB undertakes cases for investigation and preparation for criminal prosecution.

INSURANCE INFORMATION INSTITUTE

<http://www.iii.org>

The I.I.I. has been regarded as a central source for insurance information for over 40 years. The I.I.I. works with numerous sources to provide the most up-to-date information in the insurance industry.

INSURANCE INSTITUTE OF AMERICA

<http://www.aicpcu.org>

The American Institute for Chartered Property Casualty Underwriters (AICPCU) and the Insurance Institute of America (IIA) are independent, nonprofit organizations offering certification and education programs in the property and liability insurance business.

INSURANCE INSTITUTE FOR HIGHWAY SAFETY

<http://www.iihs.org>

The Insurance Institute for Highway Safety is a nonprofit research and communications organization funded by auto insurers. For over 30 years the Insurance Institute for Highway Safety has been a leader in finding out what works and doesn't work to prevent motor vehicle crashes in the first place and reduce injuries in the crashes that still occur.

INSURANCE SERVICES OFFICE

<http://www.iso.com>

ISO is the premier source of information, products, and services related to property and liability risk. For a broad spectrum of commercial and personal lines of insurance, ISO provides statistical, actuarial, underwriting, and claims information and analyses; consulting and technical services; policy language; information about specific locations; fraud-identification tools; and data processing. In the United States and around the world, ISO serves insurers, reinsurers, agents, brokers, self-insureds, risk managers, and insurance regulators and other government agencies. With 6.5 billion detailed records of insurance premiums and losses, ISO's primary database is one of the largest private databases in the world.

MISSOURI DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

<http://difp.mo.gov>

DIFP promotes effective competition and regulates where necessary to ensure consumers can make informed insurance purchase decisions based on the price and quality of service from a credible, licensed agent. CONSUMER ALERT HOTLINE – 1-800-726-7390

NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

<http://www.namic.org>

NAMIC is a full-service national trade association with more than 1,300 member companies. NAMIC offers industry news and a comprehensive list of links related to the insurance industry.

NATIONAL COUNCIL ON COMPENSATION INSURANCE

<http://www.ncci.com>

National Commission on Compensation Insurance

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

<http://www.nhtsa.dot.gov>

Values govern the way NHTSA serves and secures the trust of its own employees and the American people. The Agency's values underpin the assurance of safe, secure, efficient automotive travel. The Agency bases its policies and actions on its values. NHTSA is committed to working with other governmental and private organizations and the citizens of this nation in an open, cooperative atmosphere that is characterized by integrity, professionalism, service, and people.

NATIONAL INSURANCE CRIME BUREAU

<http://www.nicb.com>

The National Insurance Crime Bureau is a non-profit organization supported by approximately 1,000 property/casualty insurance companies. The NICB partners with insurers and law enforcement to facilitate the identification, detection and prosecution of insurance criminals.

MISSOURI LANDLORD AND TENANT LAW:

Mid-Missouri Legal Services' Tenant's Information Packet

Introduction

This guide is intended to provide some general information on how to deal with some common problems, which face tenants from time to time. This guide is not intended to be an answer to every question, nor is it intended to be specific legal advice for a specific case. When a tenant decides to try and break a lease early, or faces an eviction action in court, it is almost always a good idea to get legal advice from a licensed attorney. It is almost always a good idea to get advice from a friend or relative who is willing to give free advice based on their experience. Many times a well-meaning friend or relative has given advice, which simply lands the tenant in more legal hot water.

The relationship between a landlord and tenant is governed by certain legal rules, which both the landlord and tenant should know and understand. Before the tenant can understand his or her rights and responsibilities the tenant needs to understand what certain words mean.

Some Important Words and Their Meanings

- Oral: Spoken, not written
- Lease: An agreement between the owner of the property and person who wishes to use the property which allows the tenant to possess the property, usually in exchange for the payment of rent. A lease can be either written or oral. A lease is a legally binding contract, which can be enforced by a court of law.
- Landlord: The owner of the property. . Tenant - The person who rents the property from the landlord.
- Month-to-Month Lease: A month-to-month lease is an agreement between the landlord and the tenant where the tenant is given possession of the property for a month at a time.
- Lease For a Definite Term: A lease for a definite term is a lease which the landlord and the tenant agree to allow the tenant to possess the property for a certain time period, for example 6 months or one year.
- Eviction: The process by which a landlord can legally force a tenant out of the property before the end of the lease.
- Security Deposit: A sum of money paid by the tenant to the landlord upon move in as security for the landlord for the payment of any damages to the property caused by the tenant or any unpaid rent due upon the ending of the tenancy. This does not include an amount paid for a pet deposit.

Before You Move In

Many landlord and tenant problems can be avoided if the landlord and the tenant have a clear understanding of the rights and responsibilities of the landlord and tenant before the tenant moves in. Where the agreement between the landlord and the tenant is clear then there are usually few problems. When the agreement becomes unclear, or when the landlord or the tenant, or both, do not follow the agreement, then serious problems can come up. The agreement between the landlord and the tenant is called a lease. A lease can be oral or in writing. The advantage of a written lease is that if a problem

comes up later the landlord, tenant or a court can read the lease and know what the agreement was. If there was no written lease then the lease is known as an oral lease. When you decide to rent you need to decide if you want a written or oral lease and whether you want a month-to-month lease or if you want a lease for a definite term.

A month-to-month lease has some advantages and some disadvantages. A month-to-month lease can be ended by either the tenant or the landlord upon 30 days notice. This means that if the tenant knows that he or she will need to move on a short notice then it is relatively easy to end the lease. The disadvantage is that if the landlord wants to end the lease early then the landlord can also end the tenancy with proper 30 days notice.

A lease for a definite term also has advantages and disadvantages. The lease protects both the landlord and the tenant because both of them know that the tenant will have possession for a definite time period. The landlord is locked into a certain amount of rent for a certain period of time and the tenant is protected from early eviction or increase in rent unless the tenant does something wrong which allows the landlord to evict the tenant early. The disadvantage from the tenant's point of view is that the tenant is also locked into the tenancy for a certain period of time. If the tenant has to leave early then the tenant may be legally liable to the landlord for damages for lost rent and the expenses of re-renting the property.

The landlord has the legal right to charge the tenant a security deposit. This is an amount of money paid by the tenant to the landlord and held by the landlord as security for the payment of any damages or unpaid rent which may be due when the tenant moves out. The landlord may also require the payment of an additional deposit if the tenant wants to keep pets on the property. Under the law the amount of the security deposit cannot be more than two months rent. If the tenant's rent is \$200.00 per month, therefore, the landlord cannot charge more than a \$400.00 security deposit. If the tenant damages the property, the landlord is not limited by the amount of the security deposit if the landlord files a lawsuit for damages in court. If the tenant has paid a \$400 deposit but has caused \$800 in damages the landlord can sue the tenant for the full \$800, minus the amount of the deposit. It is also important to remember that the payment of a security deposit does **not** allow the tenant to deduct the last month's rent from the security deposit and not pay the last month's rent. Unless the landlord and the tenant agree otherwise, the tenant must pay the last month's rent and then get a refund of the security deposit.

The lease between the landlord and the tenant needs to include certain things. The following is a list of the things which need to be agreed to:

- What property is being rented.
- Whether the lease is going to month-to-month or if it is going to be a lease for a definite term.
- The amount of rent due.
- The date the rent payments will be due.
- Where and how the rental payments will be paid.
- Additional fee for late rental payments.
- Who will be living on the property.
- What appliances will be furnished with the property.
- What will you be allowed to use and under what conditions. In housing complexes, for example, the landlord can set rules and regulations for the use of laundry facilities, swimming pools, etc.

- The amount of any deposit to be paid.
- Who will pay for utilities.
- What repairs the landlord will be responsible for and what repairs and maintenance the tenant will be responsible for.
- Whether the landlord will allow any pets on the property.

Before the tenant moves in the tenant should also carefully inspect the property for any problems. It is usually a good idea to do a written move in inspection checklist. You should go through the property, room by room, and make a careful record of any and all problems with the property. Things the tenant should list are items like: spots on walls and carpets, holes in walls, the condition of all appliances. If the landlord promises that certain items will be fixed before the tenant moves in or shortly thereafter. This should be agreed to in writing as part of the lease or, at a minimum, they should be noted in the move in inspection checklist. You should review the checklist with the landlord and keep it with your other important papers.

Some Important Duties of the Tenant

The law imposes certain legal duties on tenants. If the tenant fails to comply with these duties then the tenant may be subject to eviction by the landlord or legal liability for damages, or both. These duties can sometimes be changed by agreement between the landlord and tenant. Any changes in the duties, however, should be clearly agreed to and should be put in writing. These duties include, but are not limited to, the following:

- The tenant must pay the full rent owed on time. In many cases the failure of the landlord to make repairs does not allow the tenant to refuse to pay the rent. There are some circumstances when the tenant does have the legal right to withhold the rent, but the tenant should not consider withholding rent until after he or she gets legal advice from a licensed attorney at law. The wrongful failure of the tenant to pay rent may subject the tenant to a lawsuit for eviction and damages.
- The tenant must keep the property clean. The tenant must properly dispose of all garbage, both in the home and any garbage that the tenant is responsible for outside.
- The tenant may not damage or destroy the landlord's property. The tenant will be liable to the landlord for damages to the property.
- The tenant may not make structural or other changes to the property without the landlord's permission.
- To peacefully occupy the property and not to disturb the peace of the neighbors. This is especially true in the rental of an apartment or unit in a housing complex where the landlord owns the homes or apartments next door. This means that it is not proper for the tenant to use the property for illegal purposes such as illegal drug use or to play loud music or to engage in conduct, which would disturb the neighbors.
- The tenant may be responsible to pay for damages that the tenant or the tenant's guests cause to the property.
- The tenant must make certain that water and wind do not enter and damage the house.

- The tenant must notify the landlord within a reasonable time of any damage to the property so that the landlord has the opportunity to make repairs.
- A landlord and tenant can agree that the tenant has the legal duty to make repairs to the property.

Some Important Duties of the Landlord

The law imposes certain legal duties on landlords. If the landlord fails to comply with these duties then the landlord may be liable to the tenant in an action in court for damages and, in certain serious cases, the tenant may be legally allowed to terminate the lease and move out early. These duties may be changed by agreement between the landlord and the tenant. Any changes in these duties, however, should be put in writing. These duties include, but are not limited to, the following:

- The landlord must allow the tenant to enjoy the peaceful possession of the property.
- The law requires that a landlord guarantee to the tenant that the rented premises are reasonably habitable.
- The landlord must maintain the property and appliances furnished by the landlord in substantial compliance with applicable housing and building codes.
- In apartment buildings and housing complexes the landlord must keep the common areas safe, secure and in compliance with applicable housing and building codes.
- The landlord may not turn off water, electricity, gas or telephone service **except in an emergency** (such as repairing a leak). The landlord may not lock out a tenant except under certain limited circumstances. A landlord cannot evict a tenant without a court order.
- The landlord may not raise the rent during the term of the lease. In the case of a month-to-month tenancy, the landlord may not raise the rent without giving 30 days notice.

If the landlord does not comply with his or her obligations the tenant may have certain rights. Under most circumstances the tenant may not terminate the tenancy if the landlord fails to make minor repairs. If the landlord fails to make repairs to items which put the health or safety of the tenant at risk then the landlord may have the legal right to move out and terminate the tenancy.

What Should a Tenant Do to Get the Landlord to Make Repairs?

One of the most frequent causes of problems between landlords and tenants is the landlord's failure to make repairs. In most cases the failure of the landlord to make repairs does not legally allow the tenant to withhold rent or to move out without proper notice. There are two different kinds of situations where the landlord fails to make repairs. The first is where the landlord has failed to make minor repairs and the second is when the landlord has failed to repair a problem, which may endanger the health or safety of the tenant.

Minor repairs. In general, minor repairs are repairs which are necessary to make the property useable, but which do not have an immediate impact on the health or safety of the tenant. Minor repairs could be things like changing a light bulb in a common area, repainting a room, minor cockroach problems, fixing an inside door, fixing a washing machine or replacing a window screen. If a minor problem comes up the tenant should notify the landlord right away and give the landlord a reasonable time to fix-the problem.

The tenant should write down the date the landlord was notified of the problem. If the landlord does not fix the problem then the tenant should send a polite letter to the landlord, reminding the landlord of the problem and asking the landlord to take care of the problem. The tenant should send the letter certified mail, return receipt requested and keep a copy of both the letter and the receipt. The following is a sample letter which a tenant may use.

[Tenant's Name]
[Tenant's Address]
[City, State, Zip]

[Date]

[Landlord's Name]
[Landlord's Address]
[City, State Zip]

Ref: Request for Repairs

Dear [Landlord's Name]:

I would like to remind you that on or about [date tenant notified landlord of the problem] I notified you that [describe the problem which needs repair]. I would like to again request that you take care of the problem within the next 10 days. The delay in getting the problem repaired is causing me some inconvenience and I would like it to be taken care of.

Thank you for your prompt attention to this matter.

Sincerely,

[Tenant's Name]

There are two reasons to send a letter. The first reason is to remind the landlord that the problem needs to be fixed. The second reason is to create a record that the tenant brought the problem to the landlord's attention. If there are problems - between the landlord and the tenant about the problem then the tenant can show the court a copy of the letter and the return receipt to show that the problem was brought to the landlord's attention but it was not fixed. If the landlord does not make the minor repairs even after getting the letter from the tenant then the tenant should consider getting advice from a lawyer on what to do next.

Major Repairs. Sometimes things go wrong with a house or apartment which place the health or safety of the tenant at risk, or make the home uninhabitable. Some examples of these problems are: broken furnace causing no heat when it is cold outside, a blocked furnace or gas hot water chimney, broken plumbing or sewer systems which make the bathrooms unusable, holes in the floors and exterior walls causing a dangerous situation, gas leaks, defective electrical systems which cause a fire hazard, serious flood damage, serious cockroach or vermin infestations, major leaks in the ceiling causing serious water damage or fire risks. Gas leaks and other immediate hazards should obviously be reported to the gas company or fire department at once. These problems should also be reported to the landlord immediately.

The landlord does not take action right away to fix the problem the tenant should write a letter to the landlord. If the tenant is living in a city or county with a city or county building inspector or health department the tenant should also report to the problem and ask for the property to be inspected. The following is a sample letter the tenant may use to write to the landlord about a serious problem which the landlord is not fixing and which has an immediate and major impact on the tenant's health and safety.

[Tenant's Name]
[Tenant's Address]
[City, State, Zip]

(Date)

[Landlord's Name]
[Landlord's Address]
[City, state Zip]

Ref: Request for Repairs

Dear [Landlord's Name]:

I would like to remind you that on or about [date tenant notified landlord of the problem] I notified you that [describe the problem which needs repair]. The problem is very serious and it is materially affecting my quiet enjoyment of the premises and is endangering my health and safety. In the event that this problem is not taken care of immediately I will need to consider declaring the failure to repair a breach of the lease agreement, a breach of the implied warranty of habitability and a constructive eviction from the premises. If this is necessary I will be moving out on [date] and I will take appropriate action to seek compensation in court for any damages which I may have incurred.

I would like to again request that you take care of the problem immediately. The delay in getting the problem repaired is causing me major inconvenience. I sincerely hope that I will not be required to terminate the tenancy and seek damages against you.

Thank you for your prompt attention to this matter.

Sincerely,
[Tenant's Name]

Threatening to terminate a tenancy or threatening to sue a landlord for damages has serious legal consequences. If the problem is this serious then the tenant should get legal advice from a licensed attorney before threatening to terminate the tenancy and move out. The tenant should not threaten to move out unless the tenant actually means business. If the tenant threatens to move out and the landlord calls the tenant's bluff then the tenant may be forced to move.

If the situation is immediately life threatening, such as a gas leak, blocked gas heater chimney or imminent fire hazard then the tenant may be justified in temporarily leaving the premises. In this case the landlord may be liable to the tenant, under certain circumstances, for the tenants damages. These damages can include reasonable hotel bills and other expenses incurred by die tenant as a result of the problem.

In Missouri a tenant can pay for some repairs and deduct the repairs from the rent, but only in certain, limited cases. This can be done only if the tenant provides prior written notice to the landlord and only if:

- the condition of the home detrimentally affects the habitability, sanitation or security of the home; AND
- the condition constitutes a violation of a local municipal housing or building code; AND
- the reasonable cost to correct the condition is less than \$300.00, or one- half of the rental amount, whichever is greater; AND

- in no event can the cost *of* repairs exceed one month's rent.

The tenant cannot legally deduct the cost *of* repairs from the rent if the property was damaged by the tenant, the tenant's family or other person on the premises with the tenant's consent. The tenant can only deduct the cost *of* repairs if the above conditions are met and the tenant strictly follows certain procedures which are set out in the law.

If the tenant wants to make repairs and deduct them from the rent under this law, then the tenant must send a letter to the landlord, notifying the landlord *of* the problem and giving the landlord 14 days to fix the problem. The tenant should always keep a copy *of* the letter and should mail the letter certified mail, return receipt requested. The tenant should also immediately report the problem to the local housing or building code enforcement agency and have the home inspected. The tenant should ask for a copy *of* the inspection report. Under certain emergency circumstances the time for repairs can be less, but the tenant should talk to a lawyer about this. In order to deduct the rent the tenant must cause the work to be done in a workman like manner and must give to the landlord an itemized, written statement and receipts before deducting the cost from the rent. If the landlord gives the tenant written objections to the need for the repairs then the tenant may not deduct the cost of the repair from the rent without getting a written certificate that the problem is a violation of the local building or housing code from the local government.

The tenant's right to deduct the cost of repairs from the rent is strictly limited by law in Missouri and the tenant must follow certain procedures. It is therefore a very good idea for the tenant to talk to a lawyer and get some legal advice before doing this.

When can a Landlord Terminate a Tenancy?

The landlord has a legal right to terminate a tenancy under certain circumstances. The following is a list of some of the circumstances when a landlord may be legally able to terminate a tenancy and evict the tenant.

- At the end of the lease term the landlord is entitled to the return of the possession of the property.
- If the tenant does not pay the full amount of rent due the landlord has the legal right to evict the tenant.
- When the tenant damages the landlord's property the landlord may evict the tenant.
- When the tenant violates a requirement of a written lease the landlord may evict the tenant.
- The landlord may terminate a month-to-month lease on one month's written notice.
- The landlord may terminate the tenancy and evict the tenant if the tenant or other person on the premises uses the premises for illegal drug activities, illegal gaming or prostitution.

A word about illegal drugs in or around rented property. Starting in 1997 there are tough new laws that crack down on tenants who use their homes for illegal drug activities. If a tenant allows the use, possession, sale or distribution of any illegal drugs on the rental property then the tenant's lease is automatically terminated and the landlord can evict the tenant. The prosecuting attorney can also file in Court asking the court to order a tenant to be evicted for illegal drug activity. The law also allows a Court to order that a tenant, a member of a tenant's family or a tenant's guest to be immediately evicted or excluded from the landlord's property if that person engages in any of the following:

- Drug-related criminal activity has occurred on or within the property; or

- The property was used in any way to further, promote, aid or assist in drug-related criminal activity; or
- The tenant, a member of the tenant's household or guest has engaged in drug-related criminal activity either within, on or in the immediate vicinity of the leased property; or
- The tenant has given permission to or invited someone to come on the property who had been previously removed from the property.
- An emergency which would cause physical injury to other tenants or the landlord; or
- An emergency which would cause damage to the rented property in an amount equal to 12 months rent.

There are some cases where the tenant is protected from eviction even if these illegal activities are taking place. Some examples of this are when the tenant is reasonably not aware of the activities, or when the tenant has not been able to stop the activity due to threats. If this is going on, however, the tenant should get legal advice right away, or face possible eviction. *The bottom line is that if the tenant allows any use, possession, sale or distribution of any illegal drugs in, on or around the rented property by the tenant, any household member or a guest then the tenant runs the risk of being legally evicted.*

When Can A Tenant Terminate a Tenancy?

A tenant has a legal right to terminate a tenancy under certain circumstances. The following is a list of some of the circumstances when a tenant may be legally able to terminate a tenancy.

- At the end of the lease term the tenant must return possession of the property to the landlord in substantially the same condition it was rented in, reasonable wear and tear excepted.
- When the landlord breaches the landlord's warranty that the property is habitable and the property is no longer reasonably habitable. The conditions which make the property uninhabitable can vary, but the tenant should get legal advice before the tenant moves out or refuses to pay rent for this reason.
- A tenant can terminate a month-to-month tenancy on one month's written notice.

There are some rules which a month-to-month tenant needs to follow if the tenant wants to end a month-to-month tenancy. The tenant must give proper notice of the tenant's intention to end the tenancy. The notice must be given at least 30 days prior to the date the tenant plans to move out. The notice must also take effect at the end of the next rental month. Example:

- **Proper notice.** Tenant's rent is due on the first day of each month. Tenant wants to end the lease by July 1. The Tenant must give notice to be received by the landlord on or before June 1st to end the lease on June 30th. The lease will then end on June 30th.
- **Improper Notice.** Tenant's rent is due on the first day of each month. Tenant wants to end the lease by July 15th. The tenant cannot give 30 days notice to terminate the lease by delivering notice to the landlord on or before June 15th.

The Tenant must give notice to be received by the landlord on or before June 1st to end the lease on June 30th or give notice on or before July 1st to end the lease on July 31st. If the tenant actually leaves on July 15th the tenant will be responsible for the payment of the rent for the full month of July unless otherwise agreed between the landlord and tenant.

The notice should be in writing and the tenant should keep a copy of the notice. The notice should be sent certified mail, return receipt requested and the tenant should keep the receipt. The following is a sample letter which the tenant can use to terminate a month-to-month tenancy:

[Tenant's Name]
[Tenant's Address]
[City, State Zip]

[Date letter sent]

[Landlord's Name] [Landlord's Address] (City, state Zip)

Dear [Landlord's Name]:

You are hereby notified that I am ending my month-to-month lease of your property at [address] effective on [last day of the next rental period]. Please let me know where and when to return the keys. [My new address will be: [Tenant's new Address] Thank you for your cooperation.

Sincerely,

[Your name]

This letter can also be combined with the letter asking for the return of security deposits if the tenant has paid a security deposit.

Can a Tenant Sublease the Home?

Sometimes a tenant may want to move out of the house and get someone else to move in to take over the place. A tenant can only sublease a home with the landlord's permission. If a tenant subleases the home without the landlord's permission then the landlord can sue the tenant for the amount of the rent due plus damages not exceeding double the rent amount due.

Landlord Holding Property of Tenant After the Tenant Leaves the Property

When the tenant leaves the property at the end of the lease it is very important to notify the landlord of the date that the tenant moves out. The move out date should be the date that the tenant and all of the tenant's things will be removed from the property. If the tenant leaves property behind then the tenant risks losing the property to the landlord if the tenant is not careful.

A landlord has the legal right to remove and dispose of any belongings which a tenant leaves behind if the tenant has abandoned the property. The law says that a tenant has abandoned the property if:

- The landlord reasonably believes that the tenant has left the premises and the tenant does not intend to come back; and
- The rent is due and has not been paid for 30 days; and
- The landlord posts a notice on the premises and sends a letter to the last known address of the tenant that the landlord believes that the property has been abandoned. The notice must include certain things, such as telling the tenant that the tenant has 10 days to write to the landlord and tell the landlord why the place has not been abandoned. The notice also must include the address of the landlord.

- If the tenant does not either pay the rent due or send a letter to the landlord within 10 days of the notice then the landlord can legally dispose of the tenant's property.

Return of Security Deposits

One of the biggest sources of problems between landlords and tenants at the end of a tenancy is the return of the security deposit. Some of these problems end up in court.

The landlord is only allowed to withhold from the refund of the security deposit only such amounts as are reasonably necessary:

- to cover any unpaid rent due to the landlord under the lease;
- to restore the property to its condition at the beginning of the tenancy, ordinary wear and tear excepted; or
- to pay the landlord for actual expenses the landlord has as a result of the tenant's failure to give proper notice of the tenant's intention to terminate the tenancy, provided that the landlord makes a reasonable effort to reduce his or her damages by reasonable efforts.

Within 30 days of the day the termination of the tenancy (i.e. 30 days after the day the tenant moves out), the landlord is required by law to either return the full amount of the security deposit or to give the tenant a written, itemized list of the damages for which the security deposit or any part of the security deposit is withheld. The landlord can comply with the law by mailing the security deposit, or the itemized list of damages, to the last known address of the tenant. If the tenant does not give a new mailing address to the landlord, therefore, the tenant may lose the right to claim the return of the security deposit or to claim damages for the wrongful withholding of the security deposit. The landlord has no duty to try and find the tenant's new address. It is therefore very important for the tenant to let the landlord know of the tenant's new mailing address when the tenant moves out.

The landlord is required by law to give the tenant reasonable notice, in writing, of the date and time when the landlord will inspect the property following the end of the lease to decide how much of the security deposit to be withheld from the tenant. The inspection must be held at a reasonable time. The tenant has the legal right to be present at the inspection of the property at the time and date scheduled by the landlord. The landlord has to send the notice to the tenant's last known address. It is therefore important for the tenant to notify the landlord, in writing, of his or her new mailing address so that the landlord can send the notice to the correct address. If the tenant fails to give the landlord the correct address then the landlord has no duty to try and find the tenant's new address.

If the landlord fails to comply with the procedures described above, or if the landlord wrongfully withholds the security deposit or any part of the security deposit then the landlord will be legally liable to the tenant for damages in the amount not more than twice the amount of the amount wrongfully withheld.

If the tenant is afraid that the landlord may not be planning to return the security deposit or if the landlord may be planning to withhold too much from the security deposit then the tenant should take the following steps:

- Send a letter to the landlord, certified mail, return receipt requested giving the tenant's new address and asking for the return of the security deposit and/or an itemized list of the damages. A sample letter is provided below.
- Make certain that the property is left clean, with no garbage or other items of the tenant's property left behind.

- Take photographs of each and every room in the house or apartment and of the outside of the property, including any damage to the property which the landlord may try to charge for.
- Be present at the move out inspection and, if possible have a witness present. The landlord is not, however, legally required to agree to allow a witness to be present.

The following is a sample letter which can be sent to a landlord to ask for the return of the security deposit. It can be modified as circumstances require.

[Tenant's Name]
 [Tenant's New Mailing Address]
 [City, State Zip]

[Date]

[Landlord's Name] [Landlord's Address] [City, state Zip]

Ref: Request for Return of Security Deposit

Dear Landlord:

As you know, my tenancy is set to terminate on [date]. I am hereby requesting that no later than 30 days from the end of the tenancy you either return the security deposit in full or furnish me with a written, itemized list of the damages for which you are withholding any part of the security deposit in the manner required by law.

I would like to be present at the move out inspection. I am therefore asking that you give me reasonable notice of the date and time you plan to inspect the property at the termination of the tenancy to determine the amount of the security deposit to be withheld.

You can send me the notices to the address stated above. Thank you for your cooperation.

Sincerely,

[Your Name]

You should remember to send the letter to your landlord by certified mail, return receipt requested. And keep the receipt. If the landlord does not return the deposit, if the landlord withholds too much from the deposit, or if the landlord fails to give you the itemized list of damages the may want to consider taking the case to small claims court, or raising this as a counterclaim against the landlord if the landlord has sued the tenant.

A Checklist of Important Things to Remember

There are several things that you should be sure to remember to do to make life easier if problems arise between the tenant and the landlord:

- Keep copies of all leases, letters and other papers in a file and do not throw them away.
- Prepare a move in checklist.
- Never pay rent in cash.
- Pay rent with a check: or money order.

- Keep all rent receipts.
- Keep all receipts for repairs made by the tenant.
- Make all requests for repairs to the property in writing.
- Keep a copy of all letters or other papers you send to the landlord or that the landlord sends to you.
- Prepare a move out checklist.
- Leave the property clean and in good condition, normal wear and tear excepted.
- Notify the landlord, in writing of the tenant's new mailing address so that the landlord can refund the security deposit or send an itemized list of damages.

What Happens When the Tenant Does Not Pay the Rent?

The tenant has a legal obligation to the entire amount of rent when it is due. This is because, among other reasons, the landlord must make mortgage and other payments on the property and the landlord counts on a timely receipt of the rent to make the payments. The landlord is usually not legally required to agree that a tenant pay rent late, or to accept reduced payments. Many landlords, however, are willing to work with tenants when tenants run into problems with making rent payments. If the tenant runs into a problem then the tenant should talk it over with the landlord and see if an agreement can be worked out. Many leases require the tenant to pay a late fee when they are late with the rent.

If the tenant is late with the rent the landlord will make a demand for the rent. This demand can be either oral or in writing. If the tenant does not pay the amount due or if the landlord and tenant do not come to an agreement about making up the late rent then the landlord can file a lawsuit against the tenant in Court to evict the tenant. With a few exceptions, this is the only legal way to force a tenant out of the property without an agreement between the landlord and the tenant. It is usually illegal for a landlord to try and force a tenant out of the property by other means. Examples of illegal methods of forcing a tenant out of the property are:

- Locking the tenant out by changing the locks, except in certain limited circumstances.
- Cutting off utilities such as water, gas or electric service.
- Entering the home and throwing the tenant's possessions out on the street without getting a court order.
- Taking the tenant's property and holding the property until the rent is paid.

If the landlord takes any of these actions then the landlord may be liable to the tenant for damages.

What to Do if the Tenant Gets Sued For Eviction or Damages

If the tenant does not pay rent, damages the landlord's property or otherwise violates the lease then the landlord may file a lawsuit against the tenant in Court. If the tenant is still in possession of the property then the landlord will usually file a lawsuit to evict the tenant and to force the tenant to pay damages.

A lawsuit is started by filing a Petition in Court. The Court then issues a paper called a Summons. The Summons will state the name of the Court, give some instructions on filing an Answer and may state the date, time and location for a hearing before a Judge. The Summons and Petition are then served on the Tenant, usually by the Sheriff. If the tenant gets served with a summons and petition it is very important that the tenant follow the following steps.

- **Talk to a Lawyer Immediately!** The only person who can legally give legal advice is a lawyer. When the tenant talks to a lawyer it is important that the tenant bring all of the legal papers to the meeting, including: the summons and petition, a copy of the lease, all rent receipts to show payment of the rent, all letters from and to the landlord, and all other papers about the tenancy. The lawyer can give the tenant advice on what the tenant needs to do to fight the case. The lawyer can also give the tenant advice on whether the tenant may be able to file a lawsuit against the landlord for damages called a counterclaim. This is very important because sometimes if a counterclaim is not filed by the date set for hearing in the summons the tenant may not be allowed to file the counterclaim or certain defenses to the claim in the future.
- **Show Up In Court On the Date and Time Set in the Summons! NEVER IGNORE THE SUMMONS.** If the tenant does not show up in Court, at the right place and on time, then the Court will enter an order in favor of the landlord and the tenant will probably lose the right to fight the eviction. This means that in addition to being ordered to leave the property the tenant may also be ordered to pay back rent, the landlord's damages, the landlord's attorney's fees and court costs. This will be a judgment against the tenant, which may affect the tenant's future credit rating. The tenant may reclaim the ability to file a lawsuit for the tenant's damages under certain circumstances, but failure to appear is very risky.

If the tenant gets sued there are several important things to remember.

- The tenant must act at once!
- It is the tenant's responsibility to get legal advice. The landlord's attorney, the clerk of the Court and the Judge are not allowed to give legal advice to the tenant.
- It is the tenant's responsibility to understand the law and courtroom procedures. If the tenant does not understand them then it is the tenant's responsibility to get legal advice from a lawyer.
- Ignorance of the law is not an excuse in court. It is the tenant's responsibility to get legal advice before going to court. It is not an excuse, for example, for the tenant to tell the judge that the tenant did not understand the summons or petition.

If the Judge enters an order against the tenant evicting the tenant and/or ordering the tenant to pay damages, costs and attorney's fees then the order can be enforced against the tenant in a number of ways. The landlord can apply for an order (called a writ of execution) to the Sheriff, which orders the Sheriff to put the tenant and his or her property off the premises. In most cases, however, the Sheriff or Police cannot evict the tenant by force until the time for appeal or request for trial de novo has passed, usually 10 days. If the Judge orders the tenant to pay damages the writ of execution can also direct the Sheriff to seize and sell some of the tenant's property to pay off the judgment. The landlord can also apply to the court to enter an order to garnish the tenant's wages. This means that the court will order the tenant's employer to deduct money directly from the tenant's paycheck to pay the bill.

If the tenant is not satisfied with the judgment then the tenant has rights to appeal the decision. The tenant has the right to request a trial de novo (a new trial before a circuit judge) or an appeal if the case was tried to a Circuit Judge, but a trial de novo or an appeal will not automatically prevent the eviction.

unless the tenant posts a bond with the court within the time for filing the request for a trial de novo or appeal. There are strict legal deadlines for filing appeals or requests for a trial de novo and appeals. If the tenant does not meet the deadlines then the tenant is out of luck. That is why it is so important that the tenant get legal advice from a lawyer RIGHT A WAY. The amount of the bond must be sufficient to pay all damages, costs and rent due under the order. Once the Court order is entered and the tenant refuses to leave then the landlord can ask the Sheriff or Police to enforce the order and remove the tenant and the tenant's belongings by force.

Where to go for Legal Help or Advice

One of the best ways to avoid problems is to get some legal advice before the problem gets so serious that the landlord files an eviction action or the tenant threatens to move out. If the tenant does not have a lawyer then there are several places that the tenant can go to get free or low cost legal advice.

Free legal services and advice are available to eligible, low-income tenants through the various legal aid offices which serve Missouri. The Legal Aid offices which serve Missouri are:

- Legal Services of Eastern Missouri, Inc. Phone: 800-444-0514 or 314-534-4200
- Mid-Missouri Legal Services Corp. Phone: 573-442-0116 or 1-800-568-4931 (between 9:00 a.m. and 11:00 a.m.)
- Legal Aid of Western Missouri Phone: 816-474-6750
- Meramec Area Legal Services Phone: 573-341-3655 800-999-0249
- Legal Aid of Southeastern Missouri Phone: 573-683-3783 or 800-748-7456
- Legal Aid of Southwest Missouri Phone: 573-862-1100 or 800-444-4863

If a tenant does not qualify for free legal services through legal aid then the tenant can get help finding a lawyer through the Missouri Bar Lawyer's Referral Service. The Service offers a referral to a private attorney for a half-hour consultation for a \$20.00 fee. It is usually well worth the \$20.00 fee to avoid the possibility of paying substantially more down the road. The Lawyer's Referral Service may be reached at the following numbers:

- Central Missouri: 573-636-3635. St. Louis area: 314-621-6681
- Kansas City area: 816-221-9472. Springfield area: 417-831-2783

Persons residing in Boone County may also obtain information from the Boone County Tenant's Association at 573-882-7670.

Appendix 11

Medical Authorization Form

AUTHORIZATION AND CONSENT FOR MEDICAL TREATMENT

I (we) the undersigned parent(s) / legal guardian(s) of _____, hereby
(Name of minor)
authorize _____ to provide authorization for the medical treatment and/or
care of _____ in the event of my (our) absence or unavailability. This
(Name of minor)
authorization is specifically limited to medical treatment and/or care that is immediately
necessary in the judgment of the treating physician(s) to protect the health and life of
_____. This authorization does not allow the rendering of medical treatment
(Name of minor)
and/or care that is not immediately necessary to protect the health and life of
_____. This authorization will remain effective for _____ days from
(Name of minor)
the date set forth below, unless revoked.

Signed this _____ day of _____, 20__.

Parent/Legal Guardian

Parent/Legal Guardian

STATE OF MISSOURI)
) ss.
COUNTY OF)

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

My Commission Expires:

Appendix 12

Memorandum of Understanding between
American Red Cross &
Missouri Association of Trial Attorneys

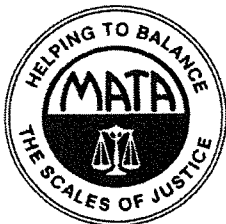
Memorandum of Understanding

between

The American National Red Cross

and

*The Missouri Association of Trial Attorneys
(MATA)*



**American
Red Cross**

I. Purpose

The purpose of the Memorandum of Understanding (MOU) is to document the relationship between the American National Red Cross (the "Red Cross") and The Missouri Association of Trial Attorneys and its participating attorneys ("MATA") in providing legal counseling services to the victims of disasters in the state of Missouri and other states as may be appropriate and/or necessary.

II. Independence of Operations

Each party to this MOU will maintain its own identity in providing service. Each organization is separately responsible for establishing its own policies and financing its own activities.

III. Organization Descriptions

The American Red Cross is a humanitarian organization led by volunteers and guided by its Congressional Charter and the Fundamental Principles of the International Red Cross and Red Crescent Movement. The Red Cross provides relief to victims of disasters and helps people prevent, prepare for and respond to emergencies. The Red Cross provides services to those in need regardless of citizenship, race, religion, age, sex, national origin, disability, sexual orientation, veteran status or political affiliation.

The Missouri Association of Trial Attorneys is a not for profit organization whose objectives are to uphold and defend the constitutions of the United States and the State of Missouri; to advance the science of jurisprudence; to promote the administration of justice; to uphold the honor of the profession of the law; to apply its knowledge and experience in the field of law to the promotion of the public good, to preserve the adversary system and the right to jury trial; to strive to achieve and maintain high standards of professional ethics, competency and demeanor in the bench and bar; and to advance the interests and protect the rights of individuals.

IV. Methods of Cooperation

The Red Cross and MATA desire to expand their mutually-beneficial relationship to enhance the abilities of MATA and its participating attorneys to prepare for and respond to emergencies and help the Red Cross with its disaster response activities as follows:

1. **Disaster preparedness education:** Red Cross encourages MATA participating attorneys to take the Red Cross's free, online, disaster preparedness tutorial found at www.redcross.org, go to *Preparedness*, click on *Be Red Cross Ready* or work with their local chapter for preparedness education.
2. **Disaster response training:** For background knowledge about Disaster Services, Red Cross encourages MATA participating attorneys to learn the basics of disaster response through training at a local chapter. Training is provided for free and could include the

following courses:

- Introduction to Disaster Services (online training) found on www.redcross.org. Go to Disaster Services, Spotlight – Take the Introduction to Disaster Services Course.

The courses below would require that MATA participating attorneys register as a RC volunteer in order to take them (**Note:** these are *not* required for MATA to perform in its capacity during a disaster relief operation):

- Chapter orientation
 - Fulfilling our Mission
 - Client Casework
 - Disaster Action Team (DAT) training (this training involves several classes over several days but gives the trainee a good understanding of Red Cross disaster response activities)
3. **Legal counseling:** MATA will support the victims of disasters in the state of Missouri and other states as may be necessary by
- providing on-site counseling
 - staffing a hot-line
 - providing outreach services

In all cases, MATA will

- provide information about legal rights
- provide legal guidance to help with the recovery process
- provide referrals as necessary.

4. **MATA response during a disaster:**

- a. When the Red Cross believes that MATA's services are necessary and/or helpful in response to a disaster situation, MATA shall be notified by a Red Cross representative.
- b. The Red Cross request for activation will include information regarding the timing, location and scope of the community needs.
- c. During the relief operation, MATA will meet with the Partner Services and the Client Casework teams to determine the type of support they will provide during the operation, e.g. support through a service center, provide outreach services or create a hotline.
- d. Partner Services will share the information regarding MATA's response with others on the relief operation.
- e. Red Cross' responsibility during a relief operation is to notify clients that MATA's services are available. Red Cross does not endorse, supervise or take responsibility for the legal services.

5. **Volunteer Involvement:**

- A representative of MATA, who responds as a member of that organization (i.e. does not use Red Cross identification or clothing), will remain independent of the Red Cross in their support of the relief operation.

- A representative of MATA, who is trained by the Red Cross and who wants to respond as a Red Cross volunteer during a disaster (i.e. uses Red Cross identification and/or clothing), will be subject to Red Cross policies and procedures, be under the direct supervision of the Red Cross and wear Red Cross identification during the disaster response (**NOTE:** This does not prevent a partner organization from wearing their own clothing, identification or logo).
 - Representatives of MATA can *not* support a relief operation in both capacities (representing both their organization and the Red Cross).
 - If representatives of MATA will be acting as Red Cross disaster responders (i.e. using Red Cross identification and/or clothing) for seven (7) days or more, those individuals must adhere to the Red Cross background check policies.
6. **Pre-disaster planning for response activities at the local level:** MATA can work with their local Red Cross chapters to develop a plan for local relief operations. Through this process new ideas for other preparedness activities in the community may become apparent.
7. **Other cooperative actions:** The Red Cross and MATA will actively seek to identify other areas within their respective organizations where cooperation and support will be mutually beneficial

General

1. The Red Cross and MATA will use or display the name, emblem, or trademarks of the other organization only in the case of defined projects and only with the prior, express, written consent of the other organization.
2. The Red Cross and MATA will keep the public informed of their cooperative efforts.
3. The Red Cross and MATA will widely distribute this MOU within the respective departments and administrative offices of each organization and urge full cooperation.
4. The Red Cross and MATA will allocate responsibility for any shared expenses in writing in advance of any commitment.
5. MATA participating attorneys will *not* receive Red Cross identification when working onsite but will remain an independent entity supporting the relief operation.
6. MATA agrees to adhere to *Attachment B - the Code of Conduct for the International Red Cross and Red Crescent Movement and NGO's in Disaster Relief* as it applies to disaster-caused situations in the USA.
7. In keeping with the spirit of this agreement and MATA's desire to provide volunteer legal services to disaster victims, MATA members will *not* receive any financial gain from supporting the relief operation. Any disaster victim that requests disaster legal assistance that may result in a fee generating case such as defined by 44 CFR §206.164(b) shall be referred by MATA to a qualified state or local lawyer referral network serving the affected disaster area. Where such referrals are impractical or impossible, MATA shall refer the disaster victim to the state bar association of the state in which the disaster occurred.
8. Because MATA and its participating attorneys are providing free legal services under extreme circumstances requiring immediate advice where complete facts and documentation may not be available, the parties agree that MATA, at its discretion may

require recipients of disaster legal services to execute an appropriate disclosure and consent form setting forth, among other things, the limitations of the advice.

- 9. Neither the Red Cross, its employees, members, agents or volunteers, nor MATA, its employees, members, agents or volunteers shall be liable to the other as the result of any negligence in performing services pursuant to this agreement.

V. Periodic Review and Analysis

Representatives of the Red Cross and MATA will, on an annual basis on or around the anniversary date of this MOU, jointly evaluate their progress in implementing this MOU and revise and develop new plans or goals as appropriate.

VI. Term and Termination

This MOU is effective as of the date of the last signature below and expires on _____, five years from the signature date. The parties may extend this MOU for an additional period not exceeding five years, and if so shall confirm this in a signed writing. It may be terminated by written notice from either party to the other at any time.

VII. Miscellaneous

Neither party to this MOU has the authority to act on behalf of the other party or bind the other party to any obligation. This MOU is not intended to be enforceable in any court of law or dispute resolution forum. The sole remedy for non-performance under this MOU shall be termination, with no damages or penalty.

VIII. Signatures

American Red Cross St. Louis, MO
Chapter

Missouri Association of Trial Attorneys

By: Nancy K. Bates
Signature

By: Sara J. Schwett
Signature

Name: Nancy Bates
Print Name

Name: Sara Schwett
Print Name

Title: Executive Director Emergency Svcs
Print Title

Title: Executive Director
Print Title

Date: June 17, 2008

Date: 6/17/08

ATTACHMENT A – Organization Contact Information**Primary Points of Contact**

The primary points of contact in each organization will be responsible for the implementation of the MOU in their respective organizations, coordinating activities between organizations, and responding to questions regarding this MOU. In the event that the primary point of contact is no longer able to serve, a new contact will be designated and the other organization informed of the change.

Relationship Manager Contact:

American Red Cross		Missouri Association of Trial Attorneys	
Contact	Robert Devaney	Contact	Sara Schuett
Title	Disaster Officer for Missouri	Title	Executive Director
Office phone	314-516-2860	Office phone	573-635-5215
Mobile	314-952-7460	Mobile	573-230-3109
e-mail	DevaneyRo@usa.redcross.org	e-mail	saraschuett@socket.net
Other		Other	

Operational Contact:

American Red Cross		Missouri Association of Trial Attorneys	
Contact	Robert Devaney	Contact	Jeannie Brandstetter
Title	Disaster Officer for Missouri	Title	Public Affairs Coordinator
Office phone	314-516-2860	Office phone	573-635-5215
Mobile	314-952-7460	Mobile	573-230-8528
e-mail	DevaneyRo@usa.redcross.org	e-mail	jeannie@socket.net
Other		Other	

Organization Information

American Red Cross St. Louis, MO Chapter		Missouri Association of Trial Attorneys	
Department		Department	
Address	10195 Corporate Square St. Louis, MO 63132	Address	240 East High Street, Suite 300 P.O. Box 1792 Jefferson City, MO 65102
e-mail		e-mail	mata@socket.net
Website	http://www.redcrossstl.org	Website	www.matanet.org
Other	314-516-2800 Business Phone	Other	

ATTACHMENT B

**Code of Conduct for
The International Red Cross and Red Crescent Movement
and
NGOs in Disaster Relief**

Principle Commitments:

1. The Humanitarian imperative comes first.
2. Aid is given regardless of the race, creed or nationality of the recipients and without adverse distinction of any kind. Aid priorities are calculated on the basis of need alone.
3. Aid will not be used to further a particular political or religious standpoint.
4. We shall endeavor not to act as instruments of government foreign policy.
5. We shall respect culture and custom.
6. We shall attempt to build disaster response on local capacities.
7. Ways shall be found to involve program beneficiaries in the management of relief aid.
8. Relief aid must strive to reduce future vulnerabilities to disaster as well as meeting basic needs.
9. We hold ourselves accountable to both those we seek to assist and those from whom we accept resources.
10. In our information, publicity and advertising activities, we shall recognize disaster victims as dignified human beings, not hopeless objects.

More information about the code of conduct can be found at <http://www.ifrc.org/publicat/conduct/>

The Code Register

The International Federation is keeping a public record of all those NGOs who register their commitment to the Code. The full text of the Code including a registration form is published by the International Federation and is available upon request. (Telephone +41 22 7304222, Fax +41 22 7330395).

Non-governmental Organizations who would like to register their support for this Code and their willingness to incorporate its principles into their work should fill in and return the registration form.