

# Hurricane Katrina: Legal Issues

From KatrinaLegalRelief

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## Introduction

This resource provides an overview of some of the legal issues that may arise as a result of Hurricane Katrina. The resource is a work in progress, and will be updated as additional research is conducted and as new issues come to light. Each section includes a note indicating the date on which the section was last edited. It is possible that the rights of hurricane victims have been addressed by new legislation or rules enacted since a particular section was updated. Please check this site on a weekly basis for updates. Additions and changes will be highlighted in the Introduction each week.

The information contained in this resource was provided through a joint effort of the University of Mississippi Civil Legal Clinic and volunteer students and professors, the Clinical Legal Education Association and the Association of American Law Schools Section on Clinical Legal Education. Clinical faculty and students from the law schools at Arizona State, Arkansas (Little Rock), Ave Maria, California (Boalt Hall), Columbia, Connecticut, CUNY, Detroit, Drake, Georgia, Harvard, Howard, Illinois, Minnesota, New Mexico, St. John's, St. Thomas, Syracuse, Thomas Cooley, Tulsa, Western New England and Yale contributed to this effort. The University of Mississippi thanks our fellow clinicians and students for their substantial time commitment and their concern for the losses suffered by Mississippians. We also gratefully acknowledge assistance from Equal Justice Works, the Mississippi Center for Justice, Morgan Lewis & Bockius, and Morrison & Foerster. Portions of the information contained in this resource, particularly the sections about FEMA, were taken (with permission) from the Hurricane Katrina Helping Handbook, produced by Morrison & Foerster. The handbook is available at: <http://www.mofo.com/about/Katrina.html>. The information contained on this site is also available as a PDF file which can be downloaded at: [http://katrinalegalrelief.org/katrina\\_manual.pdf](http://katrinalegalrelief.org/katrina_manual.pdf)

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website are urged to seek individual advice from their own legal counsel, or to contact one of the many organizations that provide pro bono legal assistance.

Portions of the information contained in this resource were produced by the University of Mississippi Civil Legal Clinic and its volunteers for the Mississippi Bar Young Lawyer's Division Hurricane Katrina Relief Manual. The Young Lawyer's Division has undertaken the daunting task of providing emergency legal assistance to the thousands of victims of Katrina and has staffed Disaster Relief Centers across the Mississippi Gulf Coast with volunteers. Persons who wish to volunteer assistance should contact the Mississippi Bar Young Lawyer's Division at (601) 948-4471 or visit the Mississippi Bar website at: <http://www.msbar.org>.

We encourage fellow practitioners involved in working for the hurricane victims to build on the information collected here in an effort to provide maximum legal support to those in need. Users are encouraged to copy and distribute these materials to help individuals and groups affected by Hurricane Katrina. Reproduction or distribution for commercial purposes without prior permission is prohibited.

Because this is a work in progress, we welcome your comments and suggestions. Please email them to: <mailto:comments@katrinalegalrelief.org>

## **Landlord / Tenant Law**

The rights between a tenant and landlord depend in part on several factors -- whether the lease is for a fixed term (one with a specific ending date) or is from month to month; whether the housing is privately owned, public, or subsidized; whether the lease is for commercial or residential use; and whether the lease specifically addresses the matter.

Responding to questions after a disaster can be complicated by the fact that the lease may not be available. In addition, the landlord and tenant may have difficulty contacting each other and the nature of the disaster may create questions that are not easily answered. Destruction of rental property creates financial problems for both landlords and tenants that may not be adequately addressed by existing law. This section begins by describing general landlord-tenant law in Mississippi, followed by specific disaster-related questions. Rental assistance available to disaster victims is described in the FEMA and benefits sections of this manual.

## **General Law**

### **Landlord's duty to repair**

In Mississippi, a landlord must repair both commercial and residential property under the following circumstances:

- By agreement. A landlord must make repairs if the rental agreement states that the landlord will make repairs.
- In common areas A landlord must make repairs in common areas, such as the grounds and buildings used by all tenants.

In addition, a landlord must repair residential property

To comply with codes. A landlord is required to comply with all building and housing codes. Miss. Code Ann. § 89-8-23. It should be noted, however, that there is no statewide housing code, and not all unincorporated areas and small towns are covered by a code.

To maintain the unit. Landlords are required to maintain residential units in substantially the same condition as at the beginning of the lease, reasonable wear and tear excepted. Miss. Code Ann. § 89-8-23. A landlord must repair

anything that was working at the beginning of the lease.

To make the unit habitable. Landlords have a duty to provide premises free of dangerous defects and to provide a habitable home. *O’Cain v. Freeman*, 603 So.2d 824 (Miss. 1992); *Houston v. York*, 755 So. 2d 495 (Miss. 2000).

## **Notice regarding repairs**

When a landlord has a duty to repair as set out above, the tenant must give the landlord 30 days notice, in writing, stating the specific problem. Tenants should date the notice, keep a copy, and make a note on the copy of the day and manner of delivery of the notice. Miss. Code Ann. 89-8-13. If the landlord does not repair after 30 days, the tenant may (1) cancel the lease, (2) use the repair and deduct remedy in Miss. Code Ann. § 89-8-15; or (3) bring suit against the landlord to make the repairs. However, if the problem was caused by a tenant or his guest, or if notice was not properly given, a tenant may be in breach of the lease by canceling or using repair and deduct.

## **Lease termination**

Month to month tenancies. A month to month tenancy (one without a set ending date) can be terminated by either the landlord or tenant by giving 30 days written notice. No reason is required for the termination. If the landlord accepts rent after the lease expires, the tenant becomes a month to month tenant, and a 30 day notice is required to terminate. Or, the landlord may refuse to accept rent at the end of a fixed term lease. If the tenant does not vacate, the landlord may file an action to remove the tenant as a holdover tenant.

Fixed-term leases. A lease with a set ending date cannot be terminated early by either landlord or tenant except in case of a breach such as non-payment by the tenant or failure to repair by the landlord. Miss. Code Ann. § 89-7-23. If a tenant wants to move before the lease ends and the landlord has not agreed to release the tenant or breached the lease, the tenant may be liable for rent for the remaining period of the lease or until the property is rented.

# **Questions and Answers**

## **Residential leases**

### **Lease termination**

#### **Must a tenant continue to lease a home that has been destroyed?**

No. A tenant will not be required to pay rent for a building that has been destroyed, unless the tenant agreed to do so in the lease or was responsible for the destruction. The lease is terminated. Miss. Code Ann. § 89-7-3.

#### **Must a tenant continue to lease a home that has been damaged or partially destroyed?**

The answer depends upon the extent of the damage. If the home is currently uninhabitable, but can be repaired, Mississippi law requires that the tenant give the landlord thirty days notice to repair the home. If repairs are not made within thirty days, the tenant may cancel the lease. If the landlord repairs the damage within thirty days, the tenant may not cancel the lease. If the property is so damaged that it cannot be used as a residence, the lease is terminated and the tenant has no duty to continue paying rent.

#### **Must a tenant continue to lease a home in a disaster area if it was not destroyed or seriously damaged?**

Mississippi law does not permit a tenant to terminate a fixed-term lease other than for the landlord’s breach or destruction of the premises. A tenant who wants to move following a disaster should try to negotiate with the

landlord to be released from his or her obligation under the lease, and should get the release in writing.

If the lease is month-to-month, the tenant may terminate the lease by giving a written, thirty-day notice.

### **May a landlord evict a tenant so that another family who was displaced by disaster can live there?**

A landlord may not terminate a fixed-term lease unless the tenant has breached the lease. However, if the tenancy is month-to-month, the landlord may terminate the tenancy by giving the tenant a thirty-day written notice to vacate.

### **May a landlord refuse to make repairs to rental property that is substantially damaged but not destroyed?**

Technically, a landlord does not have the right to refuse to make repairs when the property has not been destroyed; a tenant may seek an injunction to require repairs. However, if a landlord lacks the resources to repair and continue renting a unit after a disaster, the tenant may practically be better off looking for another place to live. However, a landlord may not refuse to repair as a pretext for evicting a tenant, then repair and rerent the property.

## **Payment of rent**

### **Must a tenant pay rent during the time a home is uninhabitable because of damages by natural disaster, if the tenant intends to continue the lease?**

Mississippi law does not authorize a tenant to withhold rent during a period of repair. However, one tenant remedy for uninhabitability is an action for damages equal to the amount by which the value of the housing was reduced. Thus, even though the tenant technically should have paid rent during that period, the landlord's right to rent may be offset by the tenant's right to damages. Because the amount of damages and offset is usually determined by a court, a tenant should attempt to reach an understanding with a landlord regarding the extent of damage and rent abatement. If no agreement is reached, a tenant who refuses to pay rent runs the risk that the amount of damages and abatement determined by a court will be less than the full amount of rent.

### **Must a tenant pay rent during a period of mandatory evacuation?**

Mississippi law does not directly address this issue. However, if government officials have determined that an area is so unsafe that it must be evacuated, the house is most likely uninhabitable. Once the evacuation order is lifted, if the property is habitable, the tenant's rent obligation should be revived. However, no Mississippi law was found directly addressing this issue.

### **May a landlord evict a tenant for nonpayment of rent following a disaster?**

There is no statutory provision requiring a landlord to stay an eviction for nonpayment of rent during an emergency. However, if the property is presently uninhabitable and in need of repair, the tenant's right to offset rent by damages should bar eviction (see discussion of rent abatement, above). A tenant who is temporarily unable to pay rent on an intact, undamaged property should attempt to negotiate with his or her landlord, particularly until the tenant has sought available benefits.

### **Is there assistance available to a tenant who is unable to pay rent as a result of a disaster?**

Temporary rental assistance may be available through FEMA.

## **Tenant abandonment**

### **What should a landlord do if a tenant evacuated and has not returned?**

Most leases provide that when a tenant abandons the property, a landlord may retake possession of the property. Under emergency circumstances, where communication may be limited, it may be difficult to determine the point at which a tenant has abandoned the property. Tenants should make every effort to contact a landlord about plans for return, and landlords should take care not to act too hastily in seeking eviction. When it is reasonable to assume that a tenant's failure to return is no longer because of inability to return to the disaster area, the landlord may seek eviction and possession after giving the proper notices for the required period of time. The Mississippi Code includes a procedure in the general (non-residential) landlord-tenant statutes for removal of a deserting tenant. Miss. Code Ann. § 89-7-49. However, it is not clear whether this section is preempted by the Residential Landlord and Tenant Act provisions for eviction.

## **Eviction**

### **What procedure must a landlord follow to evict a tenant for nonpayment of rent?**

A landlord must give the tenant a three day notice, in writing, to evict for nonpayment of rent. The notice must state that the tenant must pay rent or vacate possession. Miss. Code Ann. § 89-7-27. If the tenant does not pay in three days, the landlord may file an eviction action in justice court and obtain an order of eviction.

### **What can a tenant do to stop an eviction for nonpayment?**

If the tenant brings the rent current before the court enters judgment, the landlord may not evict the tenant. The landlord may not refuse to accept full rent payment prior to the court order. Miss. Code Ann. § 89-7-45.

### **Are there any defenses to eviction for nonpayment?**

If a tenant has properly requested repairs which were not made, the tenant may be entitled to a reasonable offset of rent for the failure to repair. In addition, if the tenant has made repairs after a proper request pursuant to Miss. Code Ann. § 89-8-15, the tenant is entitled to an offset in amount of rent due. However, the offset will not stop the eviction unless the amount owed by the landlord as damages for failure to repair is greater than the amount of rent owed by the tenant.

In addition, a landlord may not evict a tenant in retaliation for a tenant's request for repairs, evict a tenant for a bad faith reason, or evict based on discrimination on the basis of race, sex, disability, national origin, or because the tenant has children.

### **What must a landlord do to evict for breaches other than nonpayment?**

A landlord may evict a tenant for other breaches of the lease or for damages to the property or disturbances. The landlord must give the tenant a thirty day written notice of eviction which must (1) state specifically the tenant's breach; and (2) state that the lease will terminate in 30 days if the tenant has not remedied the breach in some way. Miss. Code Ann. § 89-8-13(3). The landlord must give the tenant notice of his right to cure the breach, and if the tenant does cure the breach, the landlord may not seek eviction. However, no notice is required to terminate a tenancy if the tenant commits a substantial violation that materially affects health and safety. Miss. Code Ann. § 89-8-19(4).

A tenant has a defense to eviction if the primary reason for the eviction is the landlord's retaliation against the tenant for exercise of rights under the Act, such as requesting repairs. In addition, a landlord is required to act in good faith in terminating a tenancy or refusing to renew a lease. Miss. Code Ann. § 89-8-9.

### **May a landlord evict without going through court?**

Landlords occasionally attempt to evict tenants without going through the court eviction process, either by locking the tenant out or by putting the tenant's belongings on the street. Self-help eviction is permitted in Mississippi ONLY if

(1) the landlord has a written lease which explicitly states that the landlord reserves this right; and (2) the eviction can be accomplished without breach of the peace. Furthermore, the landlord must still give the proper written notice as set out above. Even if the right has been reserved, a landlord may not proceed with self-help eviction if the tenant objects -- to do so is a breach of the peace. If the landlord evicts by self-help without a provision in the lease, or without giving proper notice, the landlord has wrongfully evicted the tenant and may be liable for damages. *Clark v. Service Auto Co.*, 108 So. 704 (Miss. 1926); *Hotel Markham v. Patterson*, 32 So.2d 255 (Miss. 1947).

### **What should a landlord do with an evicted tenant's property?**

When a landlord evicts through a court proceeding, the landlord may not seize the tenant's property to satisfy the rent. Mississippi law provides that a landlord has a lien on tenant property for payment of rent. However, similar Mississippi statutes have been struck down as unconstitutional, and the Mississippi Supreme court in dicta stated that the landlord's lien statute fails to meet constitutional due process requirements. *Bender v. North Meridian Mobile Home Park*, 636 So.2d 385 (Miss.1994). The landlords' only option without a security interest is to place an evicted tenant's belongings outside the home. A landlord may not lock a tenant's belongings in the premises as part of self-help eviction. The only way to lawfully use self-help is for the landlord to put the tenant's belongings out prior to locking the tenant out. *Bender v. North Meridian Mobile Home Park*, 636 So.2d 385 (Miss.1994). However, this method of eviction can be used only if the requirements discussed in the previous section are met.

A tenant who is being evicted should attempt to negotiate with the landlord for protection of the tenant's belongings. If a tenant is unable to return immediately, the landlord might agree to store the items at the tenant's expense.

### **Is a landlord liable for damages to a tenant's personal belongings as a result of a natural disaster?**

No. A landlord is only liable to a tenant for damages caused by the landlord's negligent behavior or fraudulent concealment of a known danger that would not be obvious to the tenant.

### **Are damages to a tenant's property covered by the landlord's insurance?**

Generally, no. A landlord has no insurable interest in the tenant's personal belongings. Insurance held by the landlord generally does not cover the tenant's property. The only coverage is usually through rental insurance.

## **Security deposits**

### **What must a tenant do to get a refund of a security deposit?**

To obtain a return of a security deposit after a lease is terminated, a tenant must simply request the deposit from the landlord. The landlord has 45 days after the end of the tenancy and demand by the tenant to return the deposit. Miss. Code Ann. § 89-8-23.

### **When can a landlord keep a security deposit?**

A landlord can keep a security deposit to remedy breaches by the tenant, including nonpayment of rent or damages, or for cleaning the apartment. The landlord must provide the tenant with a written notice itemizing the reasons for keeping the deposit within 45 days of termination of the tenancy and demand by the tenant. Miss. Code Ann. § 89-8-23.

### **What can a tenant do if the landlord improperly retains a security deposit?**

If the landlord fails to return the deposit without a good reason or without complying with the statute, the tenant may file an action in justice court for return of the deposit. If the landlord acted in bad faith, the tenant may get \$200.00 in damages in addition to the returned deposit. Miss. Code Ann. § 89-8-23.

## **Rent increases**

### **Can a landlord increase rent during a state of emergency?**

Generally, a landlord can increase rent for a month-to-month tenancy by giving the tenant thirty days notice of the proposed increase. In a fixed term lease, the rent cannot be increased until the lease is renewed, unless there is a provision in the lease providing for rent increases. However, a landlord's ability to increase rental payments following a disaster is limited. When a state of emergency has been declared under the Mississippi Emergency Management Law, goods and services may not be sold for a price higher than "the prices ordinarily charged for comparable goods or services in the same market area at or immediately before the declaration of a state of emergency or local emergency." No Mississippi decision was found discussing application of this statute to rents. In addition, a landlord may not increase rent in retaliation for a tenant's exercise of rights related to repair. Miss. Code Ann. § 89-8-17.

## **Commercial leases**

Commercial leases are governed by the general landlord-tenant statutes found in Chapter 7 of Title 89 of the Mississippi Code. The duties between commercial landlords and tenants differ from those in residential leases.

### **Duty to repair**

As a general rule, a landlord of commercial property has no duty to repair damages to leased commercial premises, unless the lease expressly provided for repairs. However, a commercial landlord does have a duty to repair common areas, hidden defects of which the landlord had knowledge, and damages caused by the landlord's negligence.

### **Termination**

A commercial lease for a fixed term automatically ends on the termination date. No notice is necessary to terminate, unless the lease provides otherwise. Termination for breach during the lease term will be governed by the terms of the lease.

If the lease does not end on a specific date, it must be terminated by written notice. A year-to-year tenancy must be terminated by giving two months notice. A month-to-month or week-to-week tenancy is terminated by seven days written notice.

# **Mortgage Law**

This section addresses questions that disaster victims may have with regard to payment of mortgages. Issues related to homeowner insurance are discussed in the insurance section of the manual. The rights of an individual with a mortgage on his or her home may vary depending on whether the mortgage is with a private institution or is federally-insured or subsidized.

## **General Law**

Borrowers are not excused from making their regular monthly loan payments even if their homes are not habitable due to a natural disaster. When a borrower is unable to make mortgage payments, the holder of the mortgage is typically allowed to foreclose on the home, which means that the home is sold to pay the mortgage. The mortgage may also be called a "deed of trust" if the document includes a "power of sale" provision that can be exercised by the "trustee." In some states, including Mississippi, a power of sale provision allows a lender to foreclose without going to court, by advertising the sale for a certain period of time. If the home sells for less than the outstanding amount of

the loan and the fees associated with sale, the borrower may be liable for a "deficiency judgment" for the amount remaining after the proceeds from the sale are deducted from the total amount owed. After an "disaster" is formally declared, however, a mortgage holder's right to an out-of-court foreclosure may be limited.

### **What steps should be taken by a disaster victim who is unable to make mortgage payments?**

Many private mortgage lenders are offering to work out plans with individuals, depending on their circumstances. Some mortgage companies will offer relief in the form of deferment or suspension of payments, waiver of late fees and penalties, suspension of negative reporting to credit agencies, or possible modification of the terms of the existing loan. These provisions will be offered on a case by case basis at the discretion of the mortgage company. It is important for affected individuals to contact their mortgage loan company to take advantage of all relief opportunities available.

### **Can a lender foreclose on a Mississippi home through "power of sale" (non-judicial foreclosure) for nonpayment after a disaster?**

Protection from inequitable mortgage foreclosures is provided under Miss. Code Ann. §§ 89-1-301 through 89-1-329 when a major disaster has occurred. After a state of emergency has been declared by both the President of the United States and by the Governor of Mississippi, a mortgage holder may not foreclose through an out-of-court power of sale by the trustee in the designated counties. To foreclose, the mortgage holder must go through chancery court. Out-of-court foreclosures are automatically enjoined once the affected counties have formally been declared "disaster areas." In addition, if a mortgage holder attempts to proceed with judicial foreclosure, that proceeding may also be enjoined by the court for up to two years. To obtain such relief, the homeowner must file a formal petition opposing the foreclosure proceedings.

### **Are there any limits on the right to foreclose through judicial foreclosure?**

If mortgaged property has been damaged as a result of the disaster, an attempted foreclosure sale may be enjoined by a chancellor who has received a sworn petition asserting that the owners are not able to pay the amount due, and have been unable to refinance the mortgage, and that, because of damage to structures on the property or economic conditions caused by the disaster, the mortgaged property has depreciated in value in an amount that is more than fifteen percent of its fair market value prior to the disaster. Upon receiving a proper petition, the court "shall" issue a preliminary injunction without requiring a bond. No relief is available under this section unless a timely petition is filed by the homeowner.

### **What relief is available to an owner of mortgaged rental property?**

The relief available under Miss. Code Ann. § 89-1-301 et seq. also applies to residential rental property leased to a third party, if the owner has sustained a loss of income in excess of fifteen percent of the average annual income from the mortgaged property for the three years immediately prior to the disaster, and if the owner is making a good faith effort to make the property habitable.

### **For how long may the foreclosure be stopped?**

After a preliminary injunction is issued, the mortgage holder may file a petition to dissolve the injunction so that the foreclosure can proceed. A hearing on that petition must be held within thirty days. At the hearing, the court may enjoin the foreclosure sale for up to two years. However, the court may establish a reasonable monthly value to be paid by the owner to maintain the property and to pay any taxes, insurance and interest on the mortgage debt during this period. At the end of two years, if any past due principal, interest or taxes remain unpaid, the foreclosure sale may proceed. At that time, the mortgage holder may also pursue any deficiency judgment against the owner that may be appropriate.

## **Other inconsistent state laws are temporarily suspended.**

Miss. Code Ann. § 89-1-319 provides that any laws that are inconsistent with the relief available under Miss. Code Ann. § 89-1-301 et seq. are "suspended" for two years after the disaster is declared. This includes a tolling of any applicable statutes of limitation. However, this section also provides that if a mortgage obligation is "renewed" or "extended" by agreement for more than one year after the disaster declaration, or if there is an agreement to pay monthly installments for a period of more than three years, the protections available under these statutes do not apply.

## **State law protection does not apply to federal mortgages.**

Miss. Code Ann. § 89-1-323 provides that the protection afforded under Miss. Code Ann. § 89-1-301 et seq. does not apply to any mortgages held by the United States or any agency thereof. Federal agencies, such as Rural Housing Authority (formerly Farmers Home Administration) typically have procedures through which homeowners may ask for forbearance, a moratorium, or other accommodation on their mortgage payments. The Federal Housing Administration and the Veteran's Administration have asked lenders holding FHA and VA guaranteed loans to establish a ninety day moratorium on foreclosures for those whose property or income earning ability was affected by the disaster. Homeowners should contact their lenders directly to determine what relief is available.

## **Other than conventional financing, what types of loans are available to help replace personal property or rebuild a home or business damaged as a result of a disaster?**

Affected individuals may be eligible for assistance in the form of a low interest loan from FEMA, or a Disaster Assistance loan from the Small Business Administration or Farm Service Agency. The availability of this assistance may be based on factors such as the cost to repair the damage, availability of conventional credit, ability to repay, and any insurance benefits available to you. [See FEMA SECTION.] The deadline for loan applications to the SBA relating to damage to homes, personal property and businesses caused by Hurricane Katrina is October 28, 2005. Timely applying with FEMA for assistance may be a prerequisite to participating in the various disaster relief programs offered by the federal government.

## **Options for relocating and refinancing.**

FEMA, in conjunction with the U.S. Department of Housing and Urban Development, is providing various types of emergency housing for disaster victims. Reconstruction loans are also available for those in the disaster areas. Mortgage Insurance for disaster victims is offered by the Federal Housing Administration through Section 203(h), to help disaster victims recover by making it easier for them to get mortgages. This program, which resembles the conventional FHA mortgage insurance program, provides mortgage insurance to protect lenders against the risk of default on mortgages made to qualified disaster victims. No downpayment is required, and borrowers are eligible for 100 percent financing. Closing costs and prepaid expenses must be paid by the borrower in cash or paid through premium pricing or by the seller, subject to a six percent limitation on seller concessions. HUD also offers the 203(k) program which may include funds in a new mortgage to both refinance an existing mortgage and repair the dwelling.

## **What steps should be taken to prevent foreclosure of the home of someone who has died?**

Federal privacy laws make it difficult for persons other than the borrower to obtain information on a loan. However, if all borrowers on the loan are deceased, most mortgage companies will work with surviving family members. Some items that the mortgage company may require are a death certificate, a copy of a will (if applicable), contact information of the responsible parties, the social security number of the person(s) who will now be responsible for the loan and insurance in the name of the estate or the new borrower(s). Some companies may require that an estate be opened before any changes can be made. Family members should contact the mortgage company immediately to determine their guidelines and requirements.

## **General suggestions.**

Contact Your Mortgage Company as soon as possible regarding your loss. You are not excused from making your regular monthly loan payments even if your home is not habitable. You should discuss forbearance or possible extension or modification of your loan obligations if you are unable to make your payments on time. Contact Your Insurance Company or Agent and file a loss claim as soon as possible. However, do not make a hasty settlement on insurance. If the property appears damaged but repairable, attempt to get a professional engineer or licensed contractor to make an inspection for structural damage. You should also have your lender explain procedures regarding handling insurance loss checks for repairs to the property and payment to contractors.

# **Property Law**

As a result of a natural disaster, property is often lost or scattered on land belonging to others. Even land and buildings may end up on another person's property, raising issues of ownership, liability, responsibility for removal, and the location of land lines. Also, people affected by a storm may be forced to use private property because of emergency conditions, raising questions of trespass and defense of property. After a storm, questions arise regarding the obligation of institutions and governments to hold property for individuals, and of the right of governments to remove debris on private property.

## **Claiming financial and personal property**

As a general rule, lost or mislaid property does not belong to the finder or to the person on whose land it is located -- ownership remains with the real owner unless he or she abandons the property. In some cases, for example, with financial property, abandonment is presumed after a certain period of time. Disposition of unclaimed financial property is governed by Mississippi's "Uniform Disposition of Unclaimed Property Act." Miss. Code Ann. § 89-12-1 (2005). Under this act, financial property includes bonds, checks, deposits, interest, dividends, income, credit balances, gift certificates, security deposits, refunds, credit memos, unpaid wages, amounts due and amounts payable under the terms of insurance policies, unused airline tickets, monies deposited to redeem stocks, bonds, coupons, and other securities. Disposition of lost items recovered by a municipality is governed by Miss. Code Ann. § 21-39-21, which allows sale of the item four months after public notice.

### **How long does a person have to claim financial property held by an entity or person affected by a disaster?**

An owner of financial property must notify the holder of his or her interest within five years. This applies to businesses, governmental agencies, or individuals who possess property and/or owe a debt obligation. Financial property is considered abandoned after five years. However, it is advisable to claim financial property as soon as possible after a disaster.

### **What steps should a person take to claim financial property?**

The owner should contact the holder of funds in writing (preferably by certified mail) notifying the holder of his or her interest, with directions for withdrawal, transfer, or other disposition.

### **What happens to personal property such as cars, equipment, furniture, or other items that have been recovered by state or municipal authorities?**

When a municipality receives property that has been lost, stolen, abandoned, or misplaced, it is required by law to post a notice in three public places describing the property and to notify the owner by mail if the owner is known. Property that is not claimed within 120 days may be sold at auction. (Or 90 days for a motor vehicle or bicycle). Notices of the auction must be posted for 10 days in 3 public places within the municipality.

## **Is there any way to recover property that has already been sold?**

An owner is entitled to the proceeds of the sale if he or she proves ownership within 90 days of the sale. A state of emergency may impact the procedures outlined by each of these statutes. Miss. Code Ann. § 33-15-17(b) (2005).

## **Who owns personal property that is carried onto the land of another?**

As a general rule, an owner does not lose title to property just because it is lost, mislaid, or carried onto the land of another.

## **Movement of Land**

During a storm, land itself may shift as trees, buildings, and even soil are transferred from one person's property to another. A storm may change the contours of water-edged property, raising questions about land lines. As a general rule, property rights depend on whether the movement of land is sudden or gradual. Accretion is a gradual change in land, while avulsion is a sudden change in land caused by water movement. Ownership will not change if soil, trees, or other parts of property shift to the land of another as a result of avulsion, or sudden movement. Events such as hurricanes will likely be categorized as avulsive. Both doctrines are recognized in Mississippi, as well as in federal common law. See generally, *Sharp v. Learned*, 14 So. 2d 218 (Miss. 1943).

## **What happens to property lines if land has been washed away because of water movement? What happens when an owner gains additional land as a result of water movement?**

An owner does not lose title to a part of a water-edged property that has been washed away suddenly since the change was avulsive and not by accretion. Similarly, an owner does not gain title to property that has shifted to his or her land by avulsive movement.

## **How do I prove land lines after a storm that moves soil?**

Evidence such as surveys, maps, charts, expert testimony, and lay witness testimony can be used to determine whether the process was avulsion or accretion.

## **Removal of Debris**

### **As between neighbors, who is responsible for removing debris from a storm?**

Each person is responsible for removing debris from his or her own property. A neighbor whose personal property has been transferred to another's does not have a legal obligation to remove the debris.

### **Does the government have a duty or right to remove debris?**

In the event of a natural disaster, affected county or municipal governments may go onto private property to aid in removing debris and to prevent further damage to such property at the request of the property owners. They may use public equipment and provide assistance by public employees. Miss. Code Ann. § 33-15-49 (2005). In order for this statute to be in effect, a proclamation must be issued declaring the areas to be disaster areas. In addition, governing authorities may go onto private property to remove debris and to perform any other necessary services to prevent the spread of disease or any other health hazard to the community at large. Upon the Governor's order, state equipment and employees may also be used to enter private or public land to remove debris.

## **Liability for damages**

### **Does a property owner have a right to sue another property owner whose property, debris or trees were transported to his land by a storm?**

Probably not. Although adjacent property owners generally have a duty to exercise reasonable care and remove dangerous conditions from their property, no one is liable for an injury caused by an act of God. This includes an injury due directly and exclusively to natural causes without human intervention, which could not have been prevented by the exercise of reasonable care and foresight. *City of Hattiesburg v. Hillman*, 76 So. 368, 370 (Miss. 1954).

### **What if an owner's property is damaged by a neighbor's tree that was dead before the storm?**

Visibly dead or decaying trees are an exception to the act of God rule. A city or property owner that has actual knowledge (i.e., visible signs of defects or a dangerous state) will be held liable for damages if they failed to exercise ordinary due care before the storm. *Warren v. City of Tupelo*, 194 So. 293 (Miss. 1946).

### **Can the state be held liable for property damage as a result of their emergency management activities?**

Neither the state, nor any of its political subdivisions, nor other agencies, or their respective agents, employees or representatives can be held liable for property damage, except in cases of willful misconduct, if they are complying with the Emergency Management Law. Miss. Code Ann. § 33-15-21 (2005).

### **Are government authorities involved in the clearance and removal operation liable for personal injury or property damage incurred as a result of their actions?**

Under the Emergency Management Law, a state employee or agent performing duties related to a removal operation is not liable for property damage except in cases of wilful misconduct, gross negligence, or bad faith. Miss. Code Ann. § 33-15-49 (2005).

### **If I voluntarily open my property as a shelter during a natural disaster, am I liable to others for any resulting personal injury or property damage?**

Any person who voluntarily and without payment allows property to be used as a shelter or who provides assistance to persons during or in recovery from an actual natural disaster, cannot be held liable for causing the death or injury of another person. Miss. Code Ann. § 33-15-21 (2005).

## **Use of private property by others**

### **When may an individual in an emergency use the property of another?**

The defense of criminal necessity allows an individual to use the property of another without liability for trespass. The defense requires that individuals: (1) must have sought to prevent a significant evil; (2) had no adequate alternative; and (3) the harm caused must not have been disproportionate to the harm avoided. *McMillan v. City of Jackson*, 701 So. 2d 1105 (Miss. 1997). The defense of necessity ceases if other alternatives (such as shelters) become available to the person. *McMillan v. City of Jackson*, 701 So. 2d 1105 (Miss. 1997).

### **When may an owner or occupant use force to remove trespassers?**

In most instances, an owner or occupant of property should call police to remove a trespasser. Property owners and occupants should exercise great caution in the use of force to remove trespassers, and should keep in mind that in an emergency some of the rules of trespass may be suspended. A property owner may not remove someone who seeks shelter from a storm if the emergency exception discussed above applies. A property owner may, however, in some cases, remove a trespasser who does not have a right to be on the property. First, trespassers must be warned that they are unwelcome. A property owner may then use only reasonable force, and may not use force that would cause serious injury. *Woodard v. Turnipseed*, 784 So. 2d 239 (Miss. Ct. App. 2001).

### **When may an owner or occupant of land use force to protect property?**

A property owner may use reasonable and necessary force to protect property only in the case of real and imminent danger, and may not use guns to protect property, even to threaten an individual. Factors in determining whether a danger is real and imminent include the defender's age and size compared to the aggressor's, the inaction of law enforcement, and whether the defender is outnumbered. *Tate v. State*, 784 So. 2d 208 (Miss. 2001); *Woodard v. Turnipseed*, 784 So. 2d 239 (Miss. Ct. App. 2001).

## **Insurance Law**

In the aftermath of a natural disaster, questions regarding insurance are likely to be the first to arise, including issues related to homeowners', automobile, life, disability, and health insurance. Questions related to health insurance are discussed in the employment and benefits sections.

### **Homeowner's Insurance**

#### **Covered losses**

##### **What steps should a homeowner take to file a claim?**

Acting quickly is important. A homeowner should contact the insurance agent or company immediately, act quickly to prevent additional damage, and document the damage. More detailed suggestions for filing a claim are provided at the end of this section.

##### **What damage caused by a hurricane is likely to be covered?**

Coverage depends on the language of a policy. Generally, standard homeowner's insurance policies cover losses caused by wind and exclude coverage for losses caused by flood. Homeowners with standard policies will have to deal with the question of whether the damage was caused by wind, by water, or by both. Some homeowners may have separate flood policies.

##### **How does a homeowner prove the cause of damage?**

Mississippi Insurance Commissioner George Dale has ordered insurance companies to be able to prove to the Mississippi Insurance Department that damage was caused by flood rather than wind before denying a claim. This is consistent with Mississippi precedent requiring insurers to prove the loss was caused by an excluded peril. *Commercial Union Ins. Co. v. Byrne*, 248 So. 2d 777, 782 (Miss. 1971). In addition, George Dale has instructed insurers that they must fully inspect damaged property before a coverage decision is made. See Mississippi Insurance Department, Insurers Directed to Fully Inspect Damaged Property Before Coverage Determinations (Sept. 7, 2005 Press Release) at <http://www.doi.state.ms.us/pressrel/pressrel9805.pdf>. Generally, whether the damage was caused by wind or flooding is one for a jury. *Liberty Ins. Co. v. Hall*, 289 So. 2d 683, 684 (Miss. 1973). Often an expert, such as an engineer, can determine whether damage was probably caused by wind - such as rain that entered through a wind-blown roof -- or by flood. Engineers may also be able to determine whether wind or flood tore a building away

from its foundation.

### **What if damage was caused by both wind and water?**

If a loss is the result of a covered cause (wind) and an excluded cause (flood), an insured may be able to argue that the loss is covered if the covered cause is the most “efficient proximate cause” of the loss. *Providence Washington Ins. Co. v. Weaver*, 133 So. 2d 635, 637 (Miss. 1961); *Litiz Mutual Ins. Co. v. Boatner*, 254 So.2d 765, 767 (1971).

Many insurance companies try to avoid this argument by specifically providing in the contract that loss caused even in part by water damage is not covered. In some states, these exclusion provisions are valid, but it appears that in Mississippi, they may not be. The Mississippi Supreme Court refused to enforce a similar provision in an accidental injury policy which required the injury to be caused solely and independently by an accident. *Bankers Life and Cas. Co. v. Crenshaw*, 483 So. 2d 254, 270 (Miss. 1985). But see *Boteler v. State Farm Cas. Ins. Co.*, 876 So.2d 1067 (Miss. Ct. App. 2004); *Rhoden v. State Farm Fire & Cas. Co.*, 32 F. Supp. 2d 907, 912-913 (S.D. Miss. 1998).

Mississippi's Attorney General Jim Hood has filed a lawsuit seeking a court declaration that flood exclusions are unenforceable as against public policy. The outcome of the lawsuit may affect recovery under numerous policies.

If you feel your insurer has inappropriately denied coverage based on the exclusion for loss caused by flood, you should consult an attorney to review your claim.

This issue will be the focus of ongoing discussion. This section will be updated as additional information is available.

### **Will a homeowner's policy cover damage caused by falling trees?**

Coverage depends on the language of the policy, however, most policies cover the loss caused when a tree falls on a house. In addition, some, if not all, of the expense of removing the tree(s) is typically covered. Generally, insurance companies do not pay for the removal of trees that have fallen in a yard. Some insurers may pay for the cost of removal if a tree is blocking a drive. Most insurers do not cover damage to trees and shrubs caused by a storm.

### **Will a homeowner's policy cover removal of a tree that falls on a neighbor's home?**

Generally, no. If a tree falls from an insured homeowner's yard onto a neighbor's house, the loss is covered by the policy of the homeowner whose house was damaged.

### **Will a homeowner's policy cover mold and wet rot?**

Many policies exclude coverage for loss caused by mold or wet rot. If, however, the mold or wet rot was caused by a covered loss, you may be able to recover the loss caused by the mold or wet rot. If your insurer denies a claim based on the mold or wet rot exclusion, you may want to consult an attorney to review your claim.

[This section will be supplemented as additional research is conducted.]

### **Will a homeowner's policy cover loss of use of a home?**

If a covered loss makes part of a house uninhabitable, the owner is probably also covered for reasonable additional living expenses necessarily incurred to maintain the family's normal standard of living. These might include rental payments made to obtain temporary housing, eating out and telephone or utility installation costs at a temporary residence.

### **Will a homeowner's policy cover loss of personal property?**

Coverage depends on the terms of the actual policy. Standard policies generally cover damage to personal property

caused by a covered loss such as wind, windstorm, fire, theft and vandalism. Coverage for loss caused by water damage/flooding is generally excluded. Most policies obligate insurers to pay the actual cash value of such contents but some obligate the insurer to pay the amount it would take to replace the goods. Coverage for valuable personal property such as jewelry, silver, art, etc. may be limited unless the insured purchased additional coverage for these particular items. The policy may contain a provision that gives the insurance company the right of "salvage" with respect to damaged property. So you should not discard any damaged property without first getting the insurance company's approval.

### **Must a claim be resolved before repairs begin?**

Ideally, an agreement should be reached with the insurer concerning the cost of repairs before permanent repairs are made. Even if you have not reached a final settlement agreement with the insurer, it may agree to make an advance payment to cover your ongoing expenses. Do not sign any release until the entire claim is settled to your satisfaction. Make sure you hire a licensed and reputable contractor to make those repairs. Beware of scammers. There may be dishonest contractors attempting to take advantage of hurricane victims. Don't enter into a contract or advance a deposit without first getting written estimates and references concerning the contractor's past work. If you have any questions concerning contractors, you can contact the Mississippi State Board of Contractors at 1-800-880-6161 or the Better Business Bureau.

### **What should a homeowner do if an agreement cannot be reached?**

A homeowner who is not satisfied with the settlement offered by the insurer should not sign a release or cash a check indicating "payment in full." Also, do not sign any document which states that you acknowledge that you have suffered a flood loss, as the insurer may be trying to get you to admit that your loss is not covered.

If you and your adjuster cannot agree on a settlement amount, contact your agent or your insurance company's claims department manager. Make sure you have figures to back up your claim for more money and submit your argument in writing. You may want to have an attorney review your submission before you submit it so that you do not say anything that can be used against you later in a lawsuit with the insurer, should that become necessary. If no agreement is reached, the insurance policy may provide for a method of independently appraising the loss. A homeowner who is unable to reach an agreement with an insurer may file a complaint with the Mississippi Department of Insurance and/or consult an attorney to review the claim. If appropriate, the attorney may negotiate with the insurance company or file suit. (For more information on filing a complaint with the Mississippi Department of Insurance, see Appendix).

### **Is recovery affected by a homeowner's absence from the house?**

Some policies exclude coverage while property is vacant or unoccupied more than a certain number of days, often sixty. A homeowner who is unable to occupy a home and is concerned about additional loss due to later storms, theft or vandalism, should discuss this issue with the insurance agent or representative.

### **What amount will an insurance company pay for a covered loss?**

Again, coverage depends on the terms of the policy. Under many policies, a homeowner is entitled to recover the full replacement cost of the damaged property -- the total amount it costs to replace a home with a home of "like kind and quality." A homeowner who has Guaranteed Replacement Coverage may be entitled to recover the total replacement cost even if it exceeds the policy limits. Under other policies, an owner may only be able to recover the actual cash value -- the cost to repair or replace minus a deduction for depreciation. Some policies contain co-insurance provisions which limit ability to recover the full replacement cost if the home is not fully insured. Homeowners should consult with the agent or company representative to discuss the settlement provisions of the individual policy.

### **How are insurance proceeds used when a destroyed home was subject to a mortgage?**

If the mortgagee (bank) is named in the insurance policy, most standard policies require that the settlement be used to pay off the loan to the bank, with the owner getting the remaining amount. Mississippi law requires a standard mortgage clause to be incorporated in all fire insurance policies. Miss Code. Ann. § 83-13-9. Mississippi law further provides that, pursuant to such a clause and upon satisfactory proof of loss, the insurer shall pay the mortgagee as its claim appears. Miss. Code Ann. § 83-13-7.

An individual mortgage agreement may contain terms which govern the right to rebuild. Depending on the amount of debt, the value of property and the original interest rate, a lender may require use of the funds to pay the mortgage instead of allowing the homeowner to rebuild. In some states, an owner must be allowed to rebuild rather than paying a mortgage if the mortgagee's security is not jeopardized. This question is not clearly answered in Mississippi.

Basic advice: Read your insurance policy and loan agreement. File a claim with your insurance company. Contact your lending institution to see if you may use the insurance proceeds to rebuild. If the mortgagee will not agree to let you use the insurance proceeds to rebuild and you believe the mortgagee's security will not be diminished by your rebuilding, you may consult with an attorney to further evaluate your rights.

### **May insurance funds be used to rebuild a home in another location?**

If the home was not subject to a mortgage, most policies will permit an owner to rebuild in another location but coverage is generally limited to the cost that would have been incurred to rebuild on the original premises. Homeowners should discuss rebuilding plans with the insurance agent to learn how rebuilding on other premises might affect coverage.

### **Must insurance funds be used to rebuild?**

A homeowner who chooses not to rebuild at all may only be able to recover the actual cash value of the home as opposed to the cost of rebuilding. The owner should discuss the ramifications of choosing not to rebuild with the agent or representative.

## **Flood Insurance**

### **What steps should an owner take to file a flood insurance claim?**

An owner who lives in a flood plain and has a federally-backed mortgage was probably required to purchase flood insurance as a condition of the mortgage. Flood insurance is sold separately through the National Flood Insurance Program (NFIP), administered by the Federal Emergency Management Agency (FEMA). Generally, the owner should follow the same procedure as for homeowner's insurance. Proof of Loss must be filed within 60 days after the loss occurs. If necessary, an extension in writing can be obtained directly from FEMA.

See NFIP Flood Insurance Claims Handbook published by FEMA at [http://www.fema.gov/pdf/nfip/f687\\_claimshdbk.pdf](http://www.fema.gov/pdf/nfip/f687_claimshdbk.pdf). For more information about flood insurance, visit [www.floodsmart.gov](http://www.floodsmart.gov). The handbook outlines the internal appeals process required before filing a lawsuit.

## **Automobile Insurance**

### **Will comprehensive automobile policies cover damage or destruction to a car by Hurricane Katrina?**

This depends on the terms of the individual policy. If covered, the owner will generally be entitled to the fair market value of the car less the deductible. If the vehicle is damaged, the insurer will generally pay the cost to repair and,

depending on the policy terms, may also pay for the cost of temporarily renting a replacement vehicle. Comprehensive coverage usually covers loss caused by fire, windstorm, flood, falling objects (trees), theft and vandalism, as well as other causes. Thus, most comprehensive policies would cover loss to an automobile.

### **Will collision policies cover damage or destruction to a car by Hurricane Katrina?**

Loss may be covered if the cause of the loss to the vehicle can be characterized as a collision. Collision is often defined in policies to include the upset of your vehicle or its impact with another vehicle or object.

### **If a loss is covered, what amount will the policy pay?**

If a car was damaged, the owner may be covered not only for the cost to repair it but also for the cost of renting a vehicle while the car is being repaired.

## **Commercial Property Insurance / Business Interruption Insurance**

### **What hurricane-related losses are likely to be covered by commercial property insurance?**

Commercial property insurance policy terms vary greatly, so each owner must refer to the terms of the individual policy. Many of the same issues discussed above, such as coverage for loss caused by wind versus flooding, will also arise under commercial property insurance. Many commercial property insurance policies also provide business interruption coverage, which covers lost income resulting from property loss caused by a covered peril. Some expenses incurred in restoring business operations may be also covered. Some policies may also cover operating expenses, such as utility expenses or salaries. Even if a business did not suffer property damage, the policy may pay for loss that was caused by property loss to a key supplier or key customer location. Some policies also provide coverage if income loss results because the government denies access to property because of a covered loss to property owned by another. In order to file a claim for lost business income, an insured should substantiate losses with business records demonstrating income and expenses. You may need to retain an accounting firm to assist you. You may be able to negotiate with your insurer in order to get an early partial payment for lost income. Do not enter into any final settlement agreement until your total losses are fully developed. [See American Bar Association, Business Interruption Checklist (March 11, 2002) at <http://www.abanet.org/litigation/committee/insurance/businesschecklist.pdf>].

## **Life Insurance**

There are two basic kinds of life insurance policies - individual and employer-sponsored group policies. Individual policies typically are obtained by people on their own, often through an insurance agent. Group coverage typically is obtained as part of an employee's benefits package. Many employers provide coverage with death benefit protection equal to a worker's salary or twice his or her salary.

### **What steps should a beneficiary take to collect on a life insurance policy?**

The beneficiary should call the agent or company on the policy or call the employer if the policy was part of an employee's benefits package. The company or employer will provide forms that should be filled out and returned with a certified copy of the deceased's death certificate.

### **What if a beneficiary cannot locate the policy?**

A beneficiary who cannot find the actual policy should try to find the agent or company that the deceased may have

used. A company should be able to find a policy by the deceased's name, address or social security number. Beneficiaries may be able to obtain information by contacting the Mississippi Department of Insurance at 1-800-562-2957 (in-state), 1-866-856-1982 (out-of-state), or by contacting the insurance department of any state where the deceased lived.

### **What type of payments are made through life insurance?**

Under most policies, the beneficiary of a life insurance policy can choose how they wish to be paid. However, if the insured pre-arranged the payout, the beneficiary has no option. The following are types of payouts typically available:

- Lump sum: The beneficiary receives the entire benefit in a single payment.
- Specific income provision: The company pays principal and interest to the beneficiary on a set schedule. These payments are also referred to as installment payments.
- Life income option: This option guarantees a certain level of income for life. The amount of the guaranteed income will be calculated based on the death benefit, the beneficiary's gender, and the beneficiary's age.
- Interest income option: The company periodically pays the beneficiary interest that is earned on the death benefit. The death benefit is retained by the insurer and is paid to a second beneficiary upon the original beneficiary's death.

A beneficiary may want to consult a financial advisor to determine which option is best. [See Insurance Information Institute, How Do I File a Life Insurance Claim? at <http://www2.iii.org/individuals/life/help/locatelost/>].

### **How can a beneficiary file a claim if there is no death certificate?**

Filing a claim without a death certificate can create problems. Under Mississippi law, a missing person is not presumed dead until he or she has been missing for seven years. Miss. Code. Ann. § 13-1-23. To file a claim without a death certificate, the beneficiary should contact the life insurance company to inquire how it will handle this type of situation. During the 9-11 disaster, many insurance companies accepted a sworn affidavit in lieu of a death certificate. It is likely that many insurance carriers will institute emergency measures for processing claims for those affected by Hurricane Katrina.

### **What if a deceased's records were destroyed and the family does not know whether there was life insurance?**

The family should go through the deceased's records (bank records, credit card records, etc.) to look for payments to a life insurance company and check the mail for any forthcoming renewal notices. The family may also check the deceased's past tax returns to determine whether the deceased reported interest income from a life insurance policy or interest paid on a loan from an insurance company. Families may call an insurance company to see if the company has a policy naming them as beneficiary. Typically, the beneficiary or deceased's social security number is on the policy for identification. [See Insurance Information Institute, Are There Ways to Locate A Lost Life Insurance Policy? at <http://www2.iii.org/individuals/life/help/locatelost/>].

### **How long does it take to receive benefits?**

Life insurance companies generally try to pay claims in a timely manner, often within 30 days of receiving a death certificate.

### **What should a beneficiary do if a claim is denied?**

Upon denial, the beneficiary should object to the denial in writing, and ask the insurer to reconsider. Any new information pertinent to the claim should be provided. If a lawsuit is filed, it should be filed in a timely manner. Certain policies require an internal review or appeal process, so you should carefully examine the policy and contact an attorney.

## **Filing and preserving a claim: General suggestions**

First, contact your insurance agent immediately. If you are unable to contact the agent, contact the insurer directly. For contact information, see Appendix. Make sure your agent knows how to contact you if you have a temporary telephone number or mailing address, as it might be necessary for the agent to call you or mail you necessary claim forms. Remember, your agent likely works for the insurance company or has some allegiance to the insurance company. So, if in doubt, contact an independent expert to assist you instead of relying on advice from your agent or from the insurance company. In addition, document all communications with your agent or the insurance company in writing. If your agent or the insurer represents something to you verbally, confirm it in writing with a follow-up letter.

Second, read your policy carefully and take note of any deadlines for submitting a proof of loss, as well as deadlines for filing suit against your insurer. Make sure that you comply with all deadlines or obtain an extension of these deadlines from your insurance company in writing.

Third, take reasonable steps to prevent additional damage to your property if you can do so safely. Many insurance policies exclude coverage for additional damage caused after the original loss if you fail to take reasonable steps to prevent damage. Keep any receipts for this emergency repair work. If you vacated your home during the storm, do not return to the damaged home until you are sure re-entry is safe. If your house suffered structural damage, make certain it will not collapse. Have a utility technician inspect your home to make sure there are no live electrical wires or gas leaks.

Fourth, make a list of all your damage (structural damage to real property and other damage to personal property - the contents of your home). When creating this inventory, include a description, brand name, estimated date on which you purchased the item, model and serial number if available, and your estimated loss. Document the state of your home and its contents if possible. For example, photograph or video any structural loss or any damaged property. Your insurance company will probably send an adjuster to your home to inspect the damage (or maybe two adjusters - one to inspect structural damage and another to inspect damage to the contents of your home). If possible, keep all damaged property until the adjuster has had an opportunity to inspect it. If you are required to dispose of damaged property before the adjuster is able to inspect, make sure to photograph or otherwise document the property before disposal.

[See National Association of Insurance Commissioners, Emergency Information for Hurricane Katrina Victims (Sept. 2, 2005 Press Release) at [http://www.naic.org/Releases/2005\\_docs/Gulf\\_help.pdf](http://www.naic.org/Releases/2005_docs/Gulf_help.pdf); Hurricane Insurance Information Center, Insurance Advice Offered for Hurricane Katrina Damage Recovery (Sept. 2, 2005) at [http://www.disasterinformation.org/disaster2/latest/insurance\\_advice/](http://www.disasterinformation.org/disaster2/latest/insurance_advice/); Insurance Information Institute, Settling Insurance Claims After a Disaster at <http://www.iii.org/media/hottopics/additional/settlingclaims/>; Mississippi Insurance Department, Dale Asks for Assistance and Patience in Handling Insurance Claims (Aug. 30, 2005 Press Release) at <http://www.doi.state.ms.us/pressrel/Katrina.pdf>.]

# **FEMA Benefits**

## **BASIC INFORMATION**

### **What is FEMA?**

FEMA is the Federal Emergency Management Agency, which steps in to manage and coordinate many government assistance programs after the President declares a federal disaster area. When the President declares a “major disaster” in the United States or its territories, federal assistance is made available, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. § 5121 et seq., to supplement the efforts and

resources of state and local governments and voluntary relief organizations. FEMA is the federal agency, a part of the U.S. Department of Homeland Security, that is responsible for coordinating federal disaster relief and assistance.

At FEMA's local assistance and disaster recovery centers, you can talk directly to representatives of state and volunteer agencies and get help with insurance questions.

## **RELIEF AVAILABLE**

### **What types of disaster assistance does FEMA administer and coordinate?**

There are several different types of assistance including various forms of housing assistance:

#### Temporary housing assistance

- lodging expense reimbursement – eligible applicants may receive a check for the

cost of short-term lodging, such as hotel rooms, incurred due to damage or inaccessibility to a residence or an official prohibition on returning to a residence.

- minimal repairs assistance – eligible applicants can receive financial assistance

to help make immediate emergency repairs to live in their residence while permanent repairs are being completed.

- rental assistance – an eligible applicant can receive financial assistance (based

on fair market rental value in the disaster area) to rent a dwelling for the pre- disaster household to live for a limited time. Rental assistance is available up to 18 months based on need, which is reviewed and evaluated quarterly.

**Manufactured housing** – FEMA may provide in-kind assistance in the form of mobile homes, a manufactured home or other readily fabricated dwelling. Due to the enormity of the housing crisis created by Hurricane Katrina, FEMA has leased several cruise ships to provide temporary housing.

**Mortgage and rental assistance (MRA)** – MRA provides means to allow people affected by a major disaster to remain in their homes.

**Individual and Family Grant (IFG) Program** – The IFG program is administered by states to cover necessary expenses and serious needs that cannot be met through other forms of disaster assistance. This assistance may cover repairing/rebuilding real or personal property, transportation, medical, dental and funeral expenses incurred by disaster victims. The maximum amount of the grant is adjusted each fiscal year and is currently \$26,200.00

**Note:** On September 7, 2005, FEMA announced that it was distributing special grants of up to \$2,000 to Hurricane victims in Louisiana and Mississippi to cover immediate needs for food, shelter, clothing, and other necessities. FEMA also announced that because many Hurricane Katrina evacuees had lost all their possessions they were relaxing standard documentation requirements for these grants.

**Housing Repair** – Eligible applicants may receive grants to repair damage from the disaster that is not covered by insurance.

**Housing Replacement** – In unusual situations where no other housing is available, homeowners and renters may receive assistance for construction of a new home.

**Other Needs Assistance (ONA)** – Eligible applicants may receive grants for necessary and serious needs such as medical, dental, funeral, personal property, moving and storage, and other expenses FEMA approves.

**Cora Brown Fund** – This fund is used for disaster victims who have exhausted all other avenues of assistance but

still have unmet needs.

**Disaster Unemployment Assistance (DUA)** – DUA provides help for workers and those who are self-employed if they become unemployed as a direct result of the effects of Hurricane Katrina. DUA is funded 100 percent by FEMA but is administered by the Department of Labor through the state unemployment agencies. For more information, please see the Employment sections of this Handbook.

**Small Business Administration (SBA) Loans** – The SBA provides low interest, long-term loans for individuals to repair/replace real or personal property and for non-farm businesses. If the SBA determines the applicant is ineligible for an SBA loan, the SBA may refer the applicant to FEMA for additional consideration.

**Crisis Counseling** – FEMA provides grant funds to state or local mental health agencies to help relieve grief, stress or other mental health problems associated with the disaster. The program is funded by FEMA but administered by the U.S. Department of Health and Human Services.

**Legal Services** – FEMA, through a program with the American Bar Association's Young Lawyers' Section, coordinates free disaster legal services to victims of major disasters. These services include assistance with insurance claims (life, medical, property), landlord-tenant problems, consumer protection, and wills and estates. Eligible individuals should contact the ABA's Young Lawyers Division (<http://www.abanet.org/yld/home.html>) or the Young Lawyers Divisions of Alabama, Florida, Louisiana or Mississippi Bar Association.

## **ELIGIBILITY**

### **Am I eligible for assistance from FEMA?**

If you experienced a loss in one of the disaster-affected counties or parishes on or after August 27, 2005 as a result of Hurricane Katrina, you may be eligible for assistance through FEMA. You should register with FEMA as quickly as possible. (You do not necessarily have to live in one of the declared counties or parishes to be eligible for FEMA's programs, but the loss must have been caused by devastation from Hurricane Katrina in those counties or parishes.) The various programs that FEMA coordinates have different eligibility criteria, and usually you only can receive assistance under one housing program at a time. FEMA will determine your eligibility for the various programs after you register.

### **Are aliens eligible for Federal disaster assistance?**

To be qualified for cash assistance from FEMA the applicant must be a U.S. citizen or a qualified alien. A qualified alien generally includes persons who are lawful permanent residents (possessing an alien registration card) or those with legal status due to asylum, refugee, or parole. For more information, please refer to the Immigration section in this Handbook or consult an immigration law expert if you have further questions.

## **HOW TO APPLY**

### **How do I register with FEMA?**

The easiest way to register with FEMA is to call (800) 621-FEMA (3362) Monday – Friday between 8 a.m. to 6 p.m. For the speech- or hearing-impaired, call TTY: (800) 462-7585. Be prepared to give the FEMA representative the following information:

- your name;
- your Social Security number;
- any applicable insurance information;
- a description of your losses;

- directions to your damaged property; and
- a phone number where you can be reached.

You can also register at FEMA's website: <http://www.fema.gov> by clicking on the "register for assistance" link. You may also check on the status of your application online. You can also register at one of FEMA's local assistance centers or disaster recovery centers. For information on locations of these centers, please see below.

### **What are Disaster Recovery Centers?**

Following most major disasters, FEMA establishes Disaster Recovery Centers (DRCs) in or near the disaster areas. DRCs serve as one-stop information centers. Staffed by representatives from various federal, state, local and voluntary agencies, these centers are tailored to respond to the needs of the particular disaster.

### **How will FEMA process my request for help?**

At the time of registration, the FEMA representative will give you a control (application) number. This number is very important for referencing your case, so please keep it handy. In the event you did not register online, it is also a good idea to keep the name of the person who registered you, in case any problem with your paperwork arises.

FEMA may then refer you to the Small Business Administration (SBA), which offers special loans to disaster victims. (It does not matter whether you own a small business or not.) If you are referred to the SBA, **YOU MUST COMPLETE AND SEND IN YOUR SBA LOAN APPLICATION, EVEN IF YOU DO NOT THINK YOU WILL QUALIFY FOR A LOAN.** The SBA serves as a gatekeeper to other government-run programs. Unless you send in your application and fail to qualify for an SBA loan (or a large enough loan to meet your needs), your application will not be passed on to the Other Needs Assistance (ONA) Programs, and you may not be eligible for additional assistance from other federal disaster programs.

If you have requested help from FEMA because of damage to your home, FEMA will send an inspector to look at the damage. These inspectors are not FEMA employees but are contractors. Nevertheless, the FEMA inspection is **FREE**. Do not let anyone charge you for an "inspection service." Request identification from the inspector, and request a copy of his or her inspection report. FEMA inspectors file a report but do not determine your eligibility.

You do not need to wait until the inspection to begin cleaning and repairing the property, but you should document the damage by taking pictures. (Video is a good record, too!) If possible, save damaged items.

You should be prepared to meet with the inspector on short notice. If you are not available for the inspection, your application may be withdrawn. Be prepared to supply the inspector with several pieces of information:

- valid identification;
- proof of home ownership or tenancy;
- proof of damages to your primary residence;
- receipts for expenses you have incurred; and
- photos of your property before you began repairs.

You will also need to sign the disaster application and a declaration that you are a citizen, a national, a resident alien, or otherwise lawfully present in the U.S. See the Immigration section of this Handbook for further discussion of immigration issues. The FEMA inspector will complete a report and transmit it to FEMA's National Processing Servicing Center (NPSC). The NPSC will review the information and decide whether you qualify for assistance. (In the interim, the NPSC may ask you for additional records, such as insurance papers, a copy of title, pay stubs, or repair estimates.) FEMA will mail you a notice of its decision.

### **What type of ownership documentation can the applicant provide to support his or her application for help?**

Below are a few types of documents that may be provided to prove ownership:

- Deed or Official record may be the original deed or deed of trust to the property listing you as the legal owner.
- Title number which lists you on the actual escrow or title document for the purchase of the dwelling.
- Mortgage payment book or other mortgage documents (i.e. late payment notice, foreclosure notice) may be used to verify the ownership when your name is listed along with the damaged dwelling address.
- Real property insurance must be for the damaged dwelling the applicant is occupying with his or her name listed as the Insured.
- Tax receipts or a property tax bill showing the damaged dwelling and listing the applicant as the responsible party to the assessments.

**What type of occupancy documentation can the applicant provide to support his or her application for help?**

Below are a few types of documents that may be provided to prove occupancy:

- Utility Bill for the dwelling the applicant is occupying with his or her name (or name of co-applicant). The utility bill should be for one of the major utilities, such as electricity, gas, or water.
- Merchant's Statement sent to the damaged dwelling the applicant is occupying with his or her name (or name of co-applicant). Merchant statements include: credit card bills, delivery notices, or other first class mail addressed to the applicant and showing the damaged dwelling address.
- Employer's Statement sent to the damaged dwelling the applicant is occupying with his or her name (or name of co-applicant). An employer's statement refers to pay stubs and similar documents sent to the applicant and showing the damaged dwelling address.
- Current Driver's License showing the address of the damage dwelling.

**To receive money for repair or help with housing needs do I first need to file a claim under any insurance policy I may have?**

Yes. In order to receive money or help with housing needs you must have filed for insurance benefits (if you have insurance) and the damage to your property must not be covered by insurance.

**What if the insurance settlement under my policy is insufficient to meet my disaster - related damage or need?**

An eligible applicant will need to write a letter to FEMA indicating the amount of the unmet need. The applicant will need to present adequate documentation from his or her insurance company for FEMA's review.

## DEADLINES FOR APPLICATIONS

Yes, there will be important application deadlines that you must meet (unless specifically extended by FEMA), each of which is calculated from the date of the disaster declaration. The standard deadline for registration for individual disaster assistance is within 60 days following the date the President declares the disaster. If the standard deadline is applied, the following would be the deadlines for individual assistance:

|                    | <b>Date of Disaster Declaration</b> | <b>Standard Registration Deadline</b> |
|--------------------|-------------------------------------|---------------------------------------|
| <b>Florida</b>     | August 28, 2005                     | October 28, 2005                      |
| <b>Louisiana</b>   | August 27, 2005                     | October 27, 2005                      |
| <b>Mississippi</b> | August 28, 2005                     | October 28, 2005                      |
| <b>Alabama</b>     | August 29, 2005                     | October 29, 2005                      |

**Can FEMA extend the registration deadline?**

Yes, FEMA is authorized to accept late registrations for an additional 60 days beyond the standard registration period. However, FEMA rules require suitable documentation of the reasons for the delay. In light of the size of the disaster resulting from Hurricane Katrina and the huge number of victims displaced from their homes, we would expect (but there is no guarantee) that FEMA may well extend the period for individuals to register for disaster assistance.

## **HOW LONG DOES IT TAKE?**

### **How long does it take to get help from FEMA?**

If you have damage to your home or its contents and you are uninsured or you have suffered damage due to a flood, a FEMA inspector should contact you within 14 days of applying, to set up an appointment to assess your damage. Typically, within about 10 days after the inspection, if FEMA determines that you qualify for help, you will receive a direct deposit to your bank account or a check in the mail.

### **Once FEMA approves an application, how long will it take for an applicant to receive disaster funds?**

Within about 10 days of an inspector's visit to an applicant's damaged residence, he or she should receive a check or a direct deposit to a bank account.

In the case of ONA assistance for Hurricane Katrina victims, FEMA has also announced that it will distribute \$2,000 in expedited cash assistance to eligible applicants who lived in disaster areas of Louisiana and Mississippi.

### **Am I Eligible For Aid With Housing Needs?**

To be eligible for help or money for housing needs that are the result of a disaster, all of the following must be true:

- You have losses in an area that has been declared a disaster area by the President, and your home is located in that area.
- The home in the disaster area is where you usually live and where you were living at the time of the disaster.
- You are not able to live in your home now, you cannot get to your home due to the disaster, or your home requires repairs because of damage from the disaster.
- You have filed for insurance benefits and the damaged property is not covered by your insurance.
- You or someone you live with is a citizen of the United States, a noncitizen national, or a qualified alien

### **Am I Eligible For Aid With NonHousing Needs?**

You are eligible for aid if all of the following apply to you:

- You have losses in the disaster area
- You filed for insurance benefits, and the damage is not covered by the insurance
- You or someone you live with is a citizen of the United States, a noncitizen national, or a qualified alien
- You have necessary expenses or serious needs because of the disaster
- You have accepted assistance from all other sources available, including insurance proceeds and SBA loans

### **When Will I NOT Be Eligible for Aid from IHP?**

You will NOT be eligible for aid if you:

- Have other, adequate rentfree housing that you can use (for example rental property not occupied)
- The home damaged is a secondary or vacation residence

- Your expenses resulted only from leaving your home as a precaution and you were able to return immediately after the incident
- You have refused assistance from your insurance provider
- Your only losses are business loans or items not covered by this program
- The damaged home where you live is located in a designated flood hazard area and your community is not participating in the National Flood Insurance Program. In this case, flood damage for your home will not be covered; however, you may qualify for rental assistance or items not covered by flood insurance (for example water wells, septic systems, medical, dental, or funeral expenses)

### **What Kinds of Losses Can I Recover?**

IHP covers repair or replacement of items that were damaged as a direct result of the disaster, and that are not covered by insurance. Repairs or rebuilding may not improve your home above its predisaster condition unless required by current building codes.

Housing Needs: Aid is limited to what is needed to make your home safe and sanitary so you can live there. IHP will not pay to return property to its original condition. You may use aid for housing needs to repair:

- Structural parts of your home (foundation, outside walls, roof)
- Windows, doors, floors, walls, ceilings, cabinetry
- Septic or sewage system
- Well or other water system
- Heating, ventilating, and air conditioning system
- Utilities (electrical, plumbing, and gas system)
- Entrance and exit from your home
- Blocking, leveling, and anchoring a mobile home and reconnecting or resetting its sewer, water, electrical and fuel lines, and tanks

NonHousing Needs: Aid is limited to items or services that help prevent or overcome a disasterrelated hardship, injury, or adverse condition. IHP will not pay to return property to its original condition. You may use aid to repair or fund:

- Disasterrelated medical and dental costs
- Disasterrelated funeral and burial costs
- Clothing; household items (furniture, appliances); tools required for your job; necessary educational materials
- Fuels for primary heat source
- Cleanup items
- Disaster damaged vehicle
- Moving and storage expenses related to the disaster
- Other necessary expenses or serious needs as determined by FEMA

### **Can an applicant apply for help for a damaged car?**

Yes. The applicant will need to provide proof of ownership and insurance information.

### **Can an applicant apply for help for food that has been lost because of the disaster?**

No. Food loss is not covered by the IHP program Voluntary organizations in the disaster area may be able to help you with food needs.

### **Will any program pay for moving and storage expenses?**

Costs of moving and storage may be covered by IHP, if these costs are directly related to Hurricane Katrina. Submit

receipts to FEMA through the IHP program to see if they are covered.

## **AFTER THE APPLICATION IS SUBMITTED**

### **If I am denied assistance by FEMA, how long do I have to appeal that decision?**

Appeals from FEMA's decisions regarding the Rental Assistance, Mortgage and Rental Assistance, and Home Repair Assistance programs are due within 60 days of the date on FEMA's notice of decision.

To appeal a decision:

1. Explain in writing why the decision is incorrect. You or someone who represents your household should sign the letter. If the person signing is not a member of your household, include a signed statement stating that the person may act for you. Date all of your letters.
2. Include the FEMA registration number and disaster number (shown at the top of the decision letter).
3. Mail appeal letter to:  
FEMA Individuals & Households Program  
National Processing Service Center  
P. O. Box 10055  
Hyattsville, MD 207827055
4. You may also fax appeal letter to:

(800) 8278112 Attn: FEMA Individuals & Households Program

### **What If I Need A Copy Of The Information In My File?**

You or someone from your household may request a copy of the information in your file by writing to:

FEMA Records Management  
National Processing Service Center  
P. O. Box 10055  
Hyattsville, MD 207827055

If someone outside your household is submitting a request for you, include a statement signed by you giving that person your permission to request this information.

### **If an applicant has questions about his or her application or needs to change some of the information provided, what should he or she do?**

Call the FEMA Disaster Helpline at 1-800-621-FEMA (3362) (hearing/speech impaired only: 1-800-462-7585).

### **If it has been more than 12 days since the FEMA inspector's visit and there has been no word from FEMA, what should the applicant do?**

Call the FEMA Disaster Helpline at 1-800-621-FEMA (3362) (hearing/speech impaired only: 1-800-462-7585) to ask about your application. If there is a Disaster Recovery Center (DRC) in the applicant's area, he or she also may inquire there about his or her application.

## **Do I Have To Use The Money For the FEMA Specified Reasons, or Can I Use It For Other Expenses?**

You must use the money you receive in the way explained by FEMA. If you do not, you may not be eligible for any additional help, and you may have to give the money back.

## **Do I Have To Repay Aid Received?**

No, it does not have to be repaid. However, SBA loans must be repaid.

## **Do I Have To Pay Taxes On Aid Received?**

No, it is taxfree.

## **Is There A Time Limit For How Long Aid Can Be Received?**

Yes, usually it is limited to 18 months from the date the President declares the disaster.

## **Will Receiving Aid Hurt My Chances For Getting Welfare, Income Assistance, Or Income Tested Benefit Programs From The Federal Government?**

No, it is not counted as income or a resource in determining eligibility for these programs.

## **Can I Reassign Or Transfer Received Aid To Another Person?**

No, you may not reassign or transfer your aid.

## **Can Aid Received Be Garnished or Seized?**

Aid is exempt from garnishment, seizure, encumbrance, levy, execution, pledge attachment, release, and waiver.

## **Do I Need To Keep Any Receipts Or Bills From Repairs?**

Yes, you must keep receipts and bills for 3 years to demonstrate how the aid was used to meet your disaster related need.

## **What If The Aid From FEMA Was Not Enough To Fix All Of The Disaster Damages?**

SBA disaster loans may be available. Application can be made for any additional amount needed to complete recovery. Call SBA at 18004885323.

## **What If I Cannot Afford A Loan From SBA To Repair Damaged Property?**

If SBA determines you cannot afford a loan, it will refer you back to FEMA. FEMA may be able to offer additional help for housing needs, however it cannot assist businesses. **IMPORTANT:** If you were sent an SBA disaster loan application, SBA will NOT refer you back to FEMA unless you complete and return the application.

## **What If, After Filing A Claim, My Insurance Settlement Is Delayed?**

If a decision on your settlement is delayed longer than 30 days from the time you filed the claim, then you must write a letter to FEMA explaining what has happened. Include documentation that you filed the claim items such as the claim number and the date you applied and the estimated date you will receive your settlement. If you are awarded aid

from FEMA, you must repay the amount the insurance settlement covers.

### **What If The Insurance Settlement Does Not Meet My DisasterRelated Needs?**

Write a letter to FEMA explaining what your unmet needs are, and include documentation from your insurance company.

### **What If I Use All Of The Additional Living Expenses (ALE) Provided By My Insurance Company?**

Write a letter to FEMA explaining why you continue to have a temporary housing need, and include documentation proving use of ALE from insurance, along with a permanent housing plan.

### **What If I Cannot Find Rental Resources In My Area?**

The FEMA Hotline (1800621FEMA) has a list of rental resources in the disaster area. If none are available in your county, an agent can provide you with resources in a nearby county.

### **Do I Have To Submit Insurance Information To FEMA For Review Within A Certain Time Limit?**

You have up to twelve (12) months from the date you registered with FEMA to submit your insurance information. IHP cannot give aid for losses that are covered by insurance.

## **OTHER FEMA SERVICES**

### **Can FEMA help a victim locate a missing family member or friend affected by Hurricane Katrina?**

The American Red Cross has set up a registry to locate missing persons as a result of Hurricane Katrina. Please visit the American Red Cross' Family Links Registry at <http://www.familylinks.icrc.org/katrina>.

### **Where can I find more information about FEMA's programs for victims of Hurricane Katrina?**

If you have questions specifically about FEMA's programs for victims of Hurricane Katrina, you may want to call a hotline established by the Young Lawyers' Division of the American Bar Association at (800) 310-7029. Additionally, if you have internet access, you can find answers to frequently asked questions about disaster assistance by reviewing FEMA's website at <http://www.fema.gov>.

## **Other State and Federal Benefit**

PLEASE NOTE: This section will be expanded to cover other topics.

Last updated 10/3/2005.

## **Food Stamps**

### **What Are Food Stamps?**

The Food Stamp Program enables lowincome families to buy nutritious food with coupons and Electronic Benefits Transfer (EBT) cards. Food stamp recipients spend their benefits to buy eligible food in authorized retail food stores.

## **Who Is Eligible To Receive Food Stamps?**

In order to qualify for Mississippi's Food Stamp Program, you must be a resident of the State of Mississippi AND your current bank balance (savings and checking accounts combined) must be under \$2,001. If you share your household with either a person age 60 or over or a person with a disability, your current bank balance (savings and checking accounts combined) must be under \$3,001. For a chart regarding income maximums for receiving food stamps, please visit [http://www.fns.usda.gov/fsp/applicant\\_recipients/income.htm](http://www.fns.usda.gov/fsp/applicant_recipients/income.htm).

There are rules on resource limits, income limits, and rules on allowable deductions from income that must be applied to determine eligibility to receive food stamps. Furthermore, there are certain employment requirements. These can be found at the Food and Nutrition Service/Department of Agriculture website at [http://www.fns.usda.gov/fsp/applicant\\_recipients/eligibility.htm](http://www.fns.usda.gov/fsp/applicant_recipients/eligibility.htm)

There are also special rules for the elderly and the disabled. These rules can be found at [http://www.fns.usda.gov/fsp/rules/Elderly\\_Disabled.htm](http://www.fns.usda.gov/fsp/rules/Elderly_Disabled.htm).

## **How Do I Apply?**

In order to apply for food stamps, an individual must visit their local county Department of Human Services Economic Assistance office. They will accept the application the day it is turned in, even if an interview is unavailable at that time. After the office receives the application, a worker will hold an interview with either the client, another member of the household, or an authorized representative of the household in order to gather information. After verification procedures are completed, the household will be notified by mail regarding their eligibility, the amount of the benefit, certification period and issuance procedure. If you qualify for food stamps, the household will receive the food stamps no later than 30 days from the date which the office receives the outcome. Please see below for information regarding expedited application process.

For a list of Mississippi counties' Department of Human Services Economic Assistance offices, visit <http://www.mdhs.state.ms.us/eadirectory1.htm>.

## **Is There A Way To Expedite The Application Process?**

Expedited food stamps are available. To be eligible for expedited food stamps, a person must have less than \$150 in gross monthly income, less than \$100 in liquid resources, have a combined gross household income less than the household's expenses. Eligible applicants must receive food stamps within seven calendar days of the application.

Through October 15, 2005, the State will certify evacuees from areas affected by Katrina under the expedited service rule.

## **How Much Can I Receive?**

The amount of money in food stamps depends upon income, resources and expenses as well as the size of the household. In 2000, a single older person received, on average, \$44 monthly. The maximum amounts receivable are \$139 for one person, \$256 for a couple and \$366 for three people.

## **Are There Replacement Food Stamps Available?**

Following the declaration of disaster, the Secretary of Agriculture, must issue food stamps to replace food destroyed during the disaster. Replacement food stamps are required to be at least equivalent to the amount of food lost, but cannot be greater than the applicable monthly allotment for the household.

Louisiana residents who have lost their card and do not know their EBT card number should call 18663348304 or

18889971117. Mississippi residents who have lost their card and do not know their EBT card number should call 18664499488. Alabama residents who have lost their card and do not know their EBT card number should call 18009978888 or 18665125087.

### **Are The Requirements For Obtaining Food Stamps Relaxed For Evacuees?**

Yes. The Food Stamp Program is implementing a onemonth policy for evacuees who have left Alabama, Louisiana and Mississippi because of Hurricane Katrina referred to as The National Enhanced Policy for Evacuees. This policy applies in all states, the District of Columbia, and the territories only for the month of September, 2005. Any evacuee household may receive a onemonth maximum food stamp benefit. Eligibility is based on evacuee status.

### **How Much Will I Receive Under The National Enhanced Policy for Evacuees?**

The household will receive the maximum allotment for its household size. Only one monthly allotment may be issued (for September or October). The state will ask about household size and use that information to calculate the allotment. The state will treat the evacuee household as a separate household even if the evacuee household purchases and prepares meals with others.

### **Are There Income Or Resource Eligibility Requirements Under The National Enhanced Policy for Evacuees?**

No. There are no income or resource eligibility tests. There are no other nonfinancial tests. And, the state will not ask about deductible expenses.

### **How Do I Prove That I Am An Eligible Evacuee?**

The state will verify every applicant's identity to the extent possible. The \$2,000 debit card issued by the Federal Emergency Management Agency will be sufficient. For other criteria, the other documentation, collateral contacts, or the applicant's selfdeclaration will be sufficient.

## **TANF**

### **What Is TANF?**

TANF is Temporary Assistance for Needy Families. The TANF program, administered by the Mississippi Department of Human Services (MDHS), provides assistance for needy families with children up to age 18 years without regard to race, creed, color, gender, age, disability or national origin. Monthly TANF money payments are made for children and their caretaker relatives who do not have enough income or resources to meet their everyday needs by state Program standards.

### **What Time Limits Are Imposed For TANF Benefits?**

An eligible family, which includes an adult in the family seeking assistance, may receive TANF for no more than 60 months lifetime benefits unless they meet certain exceptions. Also, no benefits will be paid if the TANF parent or needy caretaker relative is not participating in an approved work activity after being determined "work ready", or no longer than 24 months (within the 60 month lifetime maximum), whether or not consecutive, after receiving benefits, whichever comes first.

### **How Is Eligibility Determined For A TANF Family?**

When an application is received, a worker will conduct an investigation to see whether the family is eligible according to all TANF eligibility factors. The parent or caretaker relative will receive a notice by mail within 30 days

telling whether the family is approved for a TANF money payment, the amount, start date, etc.

Factors Involved In Determining Whether The Family Can Be Eligible For TANF Include:

**Deprivation:** The child or children must be deprived of one or both parents by reason of absence, incapacity or unemployment.

**Income:** The family's total income must be considered in determining whether the basic needs of the child can be met. Certain income can be disregarded, but all must be reported.

**Resources:** In order to be eligible, the family seeking TANF assistance must not own property (other than the home) or have cash or other resources that have a combined value of over \$2,000. The value of one vehicle will be totally excluded and the fair market value of a second vehicle is tested at \$4650 with any surplus value combined with other cash resources up to the \$2000 limit.

**Child Support Requirements:** A parent or relative who applies for and accepts a TANF money payment for children due to the continued absence of a parent must assign to the state support rights for the children. The parent or relative must also assist the state in obtaining support from the absent parent, including establishing paternity for children born outofwedlock.

### **How Much Will The TANF Payment Be?**

The amount of the TANF payment is based on the family's income. When the income does not meet the TANF Program Need Standard, the family may be approved for a money payment up to the State maximum for that household size. Monthly payments in Mississippi are limited to no more than:

\$110 for the first person

\$36 for the second person

\$24 for each additional person

### **What About Work Requirements For TANF?**

All adults in the assistance unit must participate satisfactorily in the TANF Work Program unless they meet a work exemption, i.e., incapacitation, age 60 or above, caring for a disabled household member, a person in the third trimester of pregnancy, caring for a child under 12 months old, treatment for substance abuse, or victims of domestic violence.

### **Who Receives Medicaid In TANF?**

Eligible children and their caretakers who receive a TANF money payment are also eligible for Medicaid benefits each month. Certain children and pregnant women who are not eligible through TANF may qualify for Medicaid in other Medicaidonly programs.

### **What Happens When A Person's TANF Case Is Closed?**

The TANF family may continue to receive Medicaid only benefits for an extended period of up to 4 or 12 months if the case is closed because of increased child support or earnings. The family may also qualify for help in paying for child care through the Transitional Child Care (TCC) program and with transitional transportation services when this is needed in order to continue employment.

# MEDICAID, CHIP, WIC

## What Is Medicaid?

Medicaid is a system funded by the federal government and the states, but administered by the individual states. Medicaid reimburses participating health care providers for services rendered to Medicaid recipients. Recipients of Medicaid should ALWAYS ask the medical provider if they are a "participating Medicaid provider" because it is a voluntary system.

In light of Hurricane Katrina, the criteria for becoming a Medicaid provider have been lowered so that more health care service providers can qualify to be reimbursed by Medicaid.

## Who Qualifies For Medicaid?

The first requirement for Medicaid recipients is that they must be either a United States citizen or an alien lawfully admitted for permanent residence. Second, the applicant must be a resident of the state in which they apply.

There are seven possible categories under which a person may be eligible to receive Medicaid coverage: These include

1. Supplemental Security Income Category Medicaid (available, based on income criteria, for persons 65 or over, legally blind, or disabled)
2. Qualified Medicare Beneficiaries (QMB) (available to persons eligible for Medicare Part A, and who meet the income guidelines)
3. Specified LowIncome Medicare Beneficiaries (SLMB) & Qualified Individuals<sup>1</sup> (QI1)
4. Working and Disabled (WD) (Benefits to low-income persons who work at least 40 hours a week but who are disabled)
5. Disabled Children Living at Home (DCLAH)(benefits available to children under 18 who are disabled and cared for at home rather than a nursing facility, also based on income)
6. Poverty Level, Aged, and Disabled (PLAD) (available to applicants who are low-income and over 65 or disabled) (continuation of this benefit is currently being litigated)
7. Breast & Cervical Cancer Category

Each program has separate specific income and resource requirements.

## How Do I File For Medicaid?

Applicants must file for Medicaid in person at their local Medicaid office. The telephone numbers for these offices are set out in the Appendix to this section.

## What Is CHIP?

The Children's Health Insurance Program (CHIP) is a joint federal/state program that provides health insurance coverage to lowincome uninsured children. Benefits under CHIP include all benefits under the State and School Employees' Health Insurance Plan as well as vision and hearing screening, eyeglasses, hearing aids, immunizations, preventive dental care, and routine dental fillings. There are no exclusions for preexisting conditions.

## How Is CHIP Different From Medicaid?

CHIP is designed to provide health care insurance for children in families without health insurance or with inadequate health insurance. It does not replace Medicaid; in fact, children on Medicaid are precluded from CHIP participation. CHIP is a coalition of public, nonprofit and private healthrelated organizations who are committed to

improving the health of Mississippi's Children.

### **How Much Does CHIP Cost?**

CHIP insurance is free for families with incomes less than 150% of the Federal poverty scale. For families with incomes below 200% of the poverty scale, there is a small copayment for expenses up to 5% of income, after which CHIP is free for the rest of the year.

### **Who, In Mississippi, Administers CHIP?**

The Program in Mississippi is administered jointly by the Division of Medicaid and the Department of Finance and Administration. The Division of Medicaid is responsible for management of federal and state funds, outreach and communication, eligibility determination and enrollment, reporting, and overall management of the Program. The Division contracts with the Health Insurance Management Board, acting administratively through the Department of Finance and Administration, to administer the separate insurance plan that provides health insurance coverage to those children determined eligible by the Division. Health insurance coverage is currently provided by Blue Cross & Blue Shield of Mississippi.

### **Who Is Eligible?**

Children from birth to age 19 and pregnant women who do not have currently have health insurance and have income levels up to 200% of the federal poverty level are eligible for CHIP. CHIP operates two separate programs. CHIP Phase I Uninsured children, ages 15 to 19, whose gross family income is up to 100% of the federal income limit are eligible. For example, for a family of three making less than \$1,157 per month, the child (or children) would be eligible for coverage. CHIP Phase II Uninsured children, ages birth to 19, whose gross family income is up to 200% of the federal income limit are eligible. For example, for a family of three making less than \$2,314 per month, the child (or children) would be eligible for coverage.

### **Where Can I apply?**

Applications must be made at the Medicaid Regional Office that covers the county where the applicant lives. All applications must be made in person. For more information about the Medicaid Regional Office nearest you, visit <http://www.dom.state.ms.us/>. You must provide proof of one month's family income (such as a paycheck stub) along with the application. Each adult or child applying must provide their Social Security number on the application. Eligibility is continuous for one year.

### **Are CHIP Benefits Retroactive?**

No, CHIP benefits are not retroactive. Benefits start when you are approved and will not pay for past medical bills.

### **Is There Special Assistance for Those Affected by the Hurricane?**

The Division of Medicaid is waiting for special clearance to release requirements. Anyone effected who thinks they might be eligible for CHIP or Medicaid should fill out the necessary paperwork at one of the Medicaid Regional Offices. Currently the Picayune and Gulfport Regional Medicaid Offices are closed.

### **Who Can I Contact If I Want More Information?**

Call 1877KIDSNOW (18775437669)

## **What Is WIC?**

WIC is The Supplemental Nutrition Program for Women, Infants and Children. WIC provides nutritious foods, nutrition counseling, and referrals to health and other social services to participants at no charge. WIC serves low income pregnant, postpartum, and breast feeding women, and infants and children up to age 5 who are at nutrition risk.

## **If I Have Relocated To Another State, Can I Still Use My September WIC Food Instruments?**

Yes. WIC officials in Louisiana and Mississippi have agreed that September food instruments may be used at any WIC authorized vendor in any state in the United States. But remember, the Mississippi food instruments can't be redeemed in grocery stores.

## **What If I Am From Mississippi, But I Can't Find A WIC Distribution Center In My New Location?**

If no WIC distribution center is available, but you still need food assistance, you should be referred to other emergency assistance programs. Check with your local officials to find what programs are available in your new location.

## **What If The Vendor Doesn't Have The Same Formula Listed On My Food Instrument?**

You should try to get the same item listed, but if that's impossible, the vendor can substitute another similar WIC approved item from the WIC list.

## **What If I'm Still In A Different State After September?**

You must contact that state's local WIC office in order to recertify and receive additional food instruments. Vendors should remind you of this when you redeem your September instruments.

## **What If All My Important Documents Were Destroyed In The Hurricane?**

WIC officials have agreed to waive the normal required documentation of identity, residency and income for WIC applicants affected by the disaster in order to make it easier for you to get food assistance. You may be required to sign papers confirming your identity and residency. You may also be required to sign a statement specifying the reason you can't document your income.

## **Do I Have To Live In The New Location For A Certain Time Before I Can Receive WIC Aid?**

No. Under § 246.7(1)(2) of the WIC regulations, as long as you are willing to sign papers certifying your identity and current location, WIC will not require that you have been there a certain length of time before you can get food assistance. Be aware, though, that the center may choose to certify you for a shorter than normal period of time, at their discretion, according to WIC regulation § 246.7(g)(2).

## **What If I Can't Afford Or Find Gasoline To Go To My WIC Center?**

Between September and December 2005, WIC distribution centers can mail up to three months' worth of food instruments to you, as long as you are not scheduled for a recertification visit. The centers are required to take certain mailing precautions to prevent theft while the instruments are on their way to you. If you are scheduled for a nutrition education visit, you can still have instruments mailed to you for the time being, but you have to reschedule the visit. Centers can give up to one month of food instruments until you can reschedule, per §246.7(g)(3) of WIC regulations.

## **What If I'm Having A Lot Of Trouble Scheduling A Visit To My WIC Center?**

If your WIC center is experiencing a staff shortage, and this is causing the problem, then § 246.7(g)(3) of the WIC regulations lets them either shorten or extend your certification up to thirty days, at their discretion. This applies to breastfeeding women, infants, and children five years old or younger.

## **Social Security/SSI**

What If I Did Not Receive My Latest Social Security Or SSI Benefits? == If you are accustomed to receiving paper checks, be aware that the United States Postal Service (USPS) has suspended mail service in some areas affected by Hurricane Katrina. While the USPS initially set up temporary mail delivery stations for people to pick up their Social Security checks, after September 8, the USPS will forward all unclaimed checks to the forwarding address listed in your file. Letters that cannot be forwarded will be returned to the Social Security Administration. If you experience any difficulty receiving your payment, you can go to any open Social Security office and request immediate payment.

If you receive your Social Security payment by direct deposit, your Social Security payment is scheduled to be deposited to your bank account as usual. However, if you experience any difficulty getting your payment, you can go to any open Social Security office and request an immediate payment.

While retrieving your check from any open Social Security office, you can also give an address for receipt of your next check.

### **How Do I Notify The Social Security Administration That My Address Has Changed?**

If you currently receive Social Security benefits you can change your address online by visiting <http://www.ssa.gov/coa> and answering a series of questions that have to match the records kept by the Social Security Administration.

You can also change your address on the Internet if you have established a permanent password. If you do not have a password and would like get one, you Social Security benefits, you can apply online by visiting the Social Security website or calling 18007721213.

If you do not want to answer the questions that are asked online or you do not have a permanent password, you cannot submit a change of address online. Instead, you can either speak to a Social Security representative by calling 18007721213 or you can contract a local Social Security office. You can get addresses and telephone numbers of open offices from the Social Security Office Locator at <http://www.ssa.gov/locator/> or by calling 18007721213.

### **Can I Be Eligible For SSI Now Even If I Was Not Eligible 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 18007721213. 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 Legal Services.

### **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.

## **How Do I Replace My Social Security Card?**

In order to replace your Social Security card, you must complete form SS5 ("Application for a Social Security Card"). This form is available at your nearest open Social Security office or outreach site. You can also obtain form SS5 by calling 18007721213 or downloading form SS5 at <http://www.ssa.gov>.

You should go to the nearest open Social Security office to apply for your replacement card in person. They will give you a print out of your card at the local office.

You will be required to show proper identification (ID) when applying for a replacement card. Proper identification can include a driver's license, marriage or divorce records, military records, adoption records, life insurance policy, health insurance card, or school ID card. The Social Security Administration will not accept birth certificates or hospital birth records as evidence of identity.

## **How Do I Report A Death To The Social Security Administration?**

You can report a death to the Social Security Administration by calling 18007721213 and speaking to a service representative between the hours of 7 a.m. and 7 p.m. on any business day. When you call, make sure you have the deceased person's Social Security number handy. If you are deaf or hard of hearing, call 18003250778 between 7 a.m. and 7 p.m. on any business day.

If you are getting benefits on your spouse's record when he or she dies, the Social Security Administration will change your payments to Survivor's benefits. If you are getting benefits on your own record, you can apply for Survivor's benefits. Call or visit an open Social Security office to find out whether you are eligible for money as a widow or widower.

Current benefits for children will automatically change to Survivor's benefits after the death is reported to the Social Security Administration.

## **Where Can I Find The Telephone Numbers For The Medicaid Regional Offices In Mississippi?**

Brandon 6018250477 Kosciusko 6622894477 Brookhaven 6018593230 McComb 6012492071 Clarksdale 6626271493 Meridian 601 4839944 Cleveland 6628437753 Natchez 6014454971 Columbia 6017312271 New Albany 6625340441 Columbus 6623292190 Newton 6016832581 Corinth 6622868091 Pascagoula 2287629591 Greenville 6623329370 Philadelphia 6016563131 Greenwood 6624551053 Picayune 6017980831 Grenada 6622264406 Senatobia 6625620147 Gulfport 2288633328 Starkville 6623233688 Hattiesburg 6012645386 Tupelo 6628445304 Holly Springs 6622523439 Vicksburg 6016386137 Jackson 601961 4361 Yazoo City 6627462309

# **Education Law**

Compulsory education law requires that school age children be enrolled in some type of officially recognized school system. The system may be public, private, or parochial. Parents or guardians may also home school their children, but must comply with state regulations for home schools. In a time of natural disaster, many families may be required to relocate and, as a result, to place their children temporarily or permanently in a different school system or setting, often in the middle of a school term. In the face of Hurricane Katrina, most states have temporarily waived residency or immunization requirements for school age children.

## **Is school attendance required after a disaster?**

Yes, compulsory education laws require school age children to be enrolled in some type of officially recognized school system, be it public, private, or parochial. Parents may also choose to home school their children, but must comply with state regulations for home schooling.

### **What if a local school has been closed due to the hurricane?**

The answer depends largely on whether the family has relocated. If not, and the local school is still temporarily closed, there are several options for meeting the state compulsory education law. Children may be enrolled in a neighboring district until the local school re-opens, or may be enrolled in private or parochial school. Children may also be home schooled if the state's requirements are met. Also, the Department of Education is setting up an internet system for distance learning in basic academic courses to keep temporarily displaced students on track, particularly in high school. In the end, however, the compulsory education law requires that families select one of these options for their K-12 children.

### **What should families in a temporary shelter do about education?**

If there is a functioning school district near the shelter, temporarily sheltered families must enroll school age children in public, private, or parochial school. Additionally, under the federal McKinney-Vento Act, public education must be provided to homeless children. Victims of Katrina will no doubt be considered homeless if they are staying in a temporary shelter. Under McKinney-Vento, even if a displaced family is required to move to different residential locations over a period of time, the Act provides school stability by allowing homeless children to continue attending the same school if it is feasible for them to do so and desired by their parents or guardians.

### **Is my child entitled to school meals?**

Generally, homeless students are automatically eligible for free school meals. The USDA has issued specific guidance for storm victims at: <http://www.fns.usda.gov/cnd/Governance/Policy-Memos/2005-08-31.pdf>.

### **What other services is a child displaced by Hurricane Katrina entitled to receive?**

Like other homeless students, they should be eligible for compensatory education, bilingual education, and special education and related services if otherwise qualified.

### **Can Hurricane Katrina children be segregated from other children in schools?**

No. The McKinney-Vento Act prohibits segregating educational facilities - such as by setting up shelter classrooms - on the basis of homelessness versus non-homelessness.

### **What happens when a student's former local school re-opens?**

If the family relocated temporarily due to the hurricane, school age children will transfer their enrollment back to their former school when the family returns home. Permanently relocated children will be treated like any other transfer. If available, the child's records from the former school should eventually be transferred to his or her new school. Upon the beginning of the next academic year, any regulations which were temporarily waived (for example, proof of residency, proof of immunization) will be required for re-enrollment.

### **What requirements apply to families who relocated from Louisiana to Mississippi?**

If a child was enrolled in a Louisiana school, Mississippi must accept enrollment due to reciprocal agreements between the two states. The only exception is if the child was enrolled in a pre-kindergarten program in Louisiana, since there is no guarantee a Mississippi school district will have such a program. If there is one, the family should be able to enroll a pre-K child. Families who encounter difficulty (due to lack of space, for example) with enrollment

should contact the state Department of Education for placement assistance.

### **What requirements apply to higher education students?**

Most requirements, such as residency and time of enrollment, have been waived for at least the fall semester. Arrangements will vary with the institution. University students should contact the school they wish to attend for further details. The Department of Education is also offering special treatments for student loans for hurricane victims. For more information on loan forgiveness and other programs, see <http://hurricanehelpforschools.gov>. For specific information concerning waiver of tuition at new schools or whether students can get refunds from their now-closed schools, individuals should contact their individual educational institutions.

## **Student Loans**

### **How will Katrina affect my student loan situation?**

- Sallie Mae is offering an interest-free loan of up to \$1,000.00 (through June 1, 2006) to all displaced students affected by the hurricane.
- All students that applied for a Sallie Mae Loan during the 2005/2006 academic year and were enrolled in a certain group of schools in Louisiana and Mississippi are eligible for this offer.
- The schools that apply are listed at [www.salliemae.com/katrina/index.html](http://www.salliemae.com/katrina/index.html).
- Students must either call 1-877-HELP-040 (1-877-435-7040) or e-mail Sallie Mae at [requesthelp@salliemae.com](mailto:requesthelp@salliemae.com) to begin the application process.

### **What if Sallie Mae is not the financial aid service I use?**

- The National Association of Student Financial Aid Administrators (NASFAA) has an entire section of their web page devoted to students with loans or financial aid in the affected areas.
- Some nationally known Federal Stafford and Parent loan lenders are offering assistance to students affected by Hurricane Katrina.
- For example, Student Loan Express and CIT Group, Inc. have combined services. You can contact these services by calling 1-866-SLX-PRES or visiting [www.studentloanxpress.com](http://www.studentloanxpress.com).
- Additionally, USA Funds, a nationally known education-loan guarantor, has donated \$1 million to help low income students that have been displaced by the hurricane in Alabama, Florida, Louisiana, and Mississippi. For information regarding this service, please visit [www.disasterrelief.scholarshipamerica.org](http://www.disasterrelief.scholarshipamerica.org).

### **What if my school has been closed because of Hurricane Katrina and I have already received Pell Grants or other forms of Federal student grant assistance or loans?**

Two bills have recently been passed by the U.S. House of Representatives that address this topic.

- One bill (HR 3169) allows displaced students to keep Pell Grants that were received through their Home Institution.
- Another bill (HR 3668) amended the Higher Education Act of 1965 to allow displaced students to keep all federal-grant aid for this fall.
- Under both bills, the education Secretary must grant a waiver for all students that do apply for the grants.
- Specific programs that specifically cooperating with these bills are: the Supplemental Educational Opportunity Grant program, the Leveraging Educational Assistance Partnerships program, and scholarships from Gear Up and TRIO.
- Also, legislation is pending about whether displaced students could defer payments for educational loans for up to six months without being charged any interest or other penalties for late payments.
- Currently, the law does allow borrowers affected by a natural disaster to apply for a three-month forbearance on the loans. However, interest will still accrue.

## **What if I am a high school senior and am either interested in attending a college or university affected by the hurricane or I have already sent information to one of these schools about enrollment?**

- Some enrollment offices have been moved to other locations.
- You will probably need to keep in close and frequent contact with the school you are interested in attending and work in conjunction with your high school guidance counselor to obtain this information.

## **Employment Law**

Assistance may be available to persons who become unemployed as a result of a disaster through disaster unemployment assistance (DUA) and/or state unemployment insurance (UI). An affected individual must use state unemployment benefits before being eligible for disaster benefits, although he or she may apply for both at the same time. DUA, also referred to as Disaster Relief and Emergency Assistance, is a federal program that provides temporary financial assistance to individuals unemployed as result of a major disaster declared by the President. Applications may be made through telephone (numbers listed below by state), but must be filed no later than November 30, 2005.

## **Disaster unemployment**

### **What are the basic eligibility requirements for DUA?**

There are two major requirements for an individual to qualify for DUA: 1) the individual must be out of work as a “direct result” of a major disaster; and 2) the individual must not qualify for regular unemployment insurance (UI) from any state. Once found to be eligible for DUA, workers must actively look for work and accept suitable work offered them. In addition, the individual must show that for every week he or she is collecting DUA, his or her unemployment continues to be the direct result of the disaster, not other factors.

### **How much are DUA benefit payments?**

DUA benefits are paid in weekly checks. DUA recipients receive the same weekly benefits that they would have been entitled to had they qualified for unemployment in the state where they were employed. However, at a minimum, DUA benefits must be at least one half of the state’s average weekly unemployment benefits (minimum state amounts listed below). The DUA benefits for part-time workers are pro-rated based on the hours they worked as a percent of a 40-hour work week. DUA benefits are reduced by any other wage-loss compensation, including private insurance, Supplemental Unemployment Benefits, worker’s compensation, and a pro-rated amount of a retirement pension or annuity. The minimum weekly DUA benefits are \$90 in Alabama, \$113 in Florida, \$97 in Louisiana, and \$85.50 in Mississippi.

### **How long will DUA benefits last?**

The maximum time for payment of DUA benefits is 26 weeks. However, payments cannot extend beyond the period when the disaster officially ends, which is about six months from the date the federal disaster was declared (that is, late February, in the case of the Hurricane Katrina disaster declared in Alabama, Mississippi, Louisiana and Florida). In addition, the DUA benefits cannot extend beyond the time when the recipient returns to work or self-employment or beyond the period when the individual’s unemployment is no longer directly related to the disaster.

### **Who can collect DUA?**

Those who may be eligible for DUA (and typically could not get regular state UI benefits) include:

- Self-employed individuals who lost their businesses or suffered a substantial interruption of activities as a direct result of a major disaster;
- Unemployed individuals who have become the breadwinner or major supporter of their households due to the death of the head of their household directly related to the disaster;
- Individuals unemployed as a result of an injury caused as a direct result of a disaster;
- Individuals who cannot reach their employment as a result of the disaster;
- Individuals who were scheduled to start work but became unemployed because they no longer have a job as a direct result of a disaster.

### **Are workers who run out of regular unemployment insurance eligible to receive DUA?**

No, not if the individual was laid off before the disaster, which means that their unemployment was not originally caused by the disaster as required for the federal benefit. However, if the individual's unemployment was originally caused by the disaster and his or her regular state unemployment runs out before the disaster period ends, then the individual may qualify for DUA. This is especially important in several Hurricane Katrina states where regular UI benefits often end before the standard 26 weeks, depending on the individual's income and work history. For example, the minimum duration of regular state unemployment benefits in Alabama is 15 weeks, 13 weeks in Mississippi, and 21 weeks in Louisiana. Note that the individual's DUA benefits will always expire when the disaster period official ends.

### **Are workers who did not work in the disaster area also eligible for DUA if their unemployment was still directly caused by the disaster?**

There are very limited situations where workers outside the disaster area can qualify for DUA if they were laid off due to their employer's loss of substantial revenue from contracts with businesses located in the disaster area. However, according to federal regulations adopted after the September 11th attacks, the employer or self-employed individual must have received at least a "majority of its revenue or income from an entity that was either damaged or destroyed in the disaster." In addition, the individual must continually establish that their unemployment remains directly related to the major disaster.

### **What steps should an individual take to apply for DUA?**

As of September 26, 2005, the United States Department of Labor has increased the normal 30 day filing deadline to November 30, 2005 for all Hurricane Katrina-related claims.

### **What documents are needed to apply?**

The DUA application requires proof of employment and earnings, as well as a Social Security Number. The Department of Labor also is allowing people 90 days to file paperwork for assistance. For self-employed applicants, copies of tax returns are required as proof of income and self-employment. If verification of employment or other documents requested as part of the DUA application are not available, a sworn statement including other forms of verification can be submitted. Interim DUA payments can take place while the necessary documentation is gathered.

### **Where can an individual apply for DUA?**

Each state may process DUA somewhat differently. Most states will process applications by telephone, as part of their automated telephone claims taking process for regular state unemployment benefits, and some state DUA applications may be processed through the Internet. If an individual is having problems filing for DUA directly by telephone or other means with the state where the disaster occurred, the individual can file an "interstate" claim in another state where he or she has relocated. These are claims that are processed by another state, but otherwise still involve most of the same rules that apply to workers applying for DUA in their home state.

For the latest information on how to file for DUA in states declared disaster areas as a result of Hurricane Katrina and in neighboring states where evacuees are relocating, we recommend that individuals and their advocates regularly check recent postings on the state's disaster coordination website and the U.S. Department of Labor's website listing states services available in response to Hurricane Katrina. Below is a listing of the DUA application contact numbers posted by several of the impacted states. We caution, however, that some of these contact numbers may not always provide all the necessary application information. Thus, we urge workers to regularly consult the state and federal websites referenced above for current information.

- Alabama: 1-866-243-5382
- Georgia: 1-877-709-8185
- Florida: 1-800-204-2418
- Louisiana: 1-800-818-7811 or 1-866-783-5567 or 1-800-LAHELPU
- Mississippi: 1-888-844-3577
- Texas: 1-817-420-1600

Source: National Employment Law Project (last updated September 6, 2005).

## **State unemployment compensation**

A person who has become unemployed as a result of a disaster may be eligible for unemployment benefits, generally based on the person's length of employment. A person must exhaust these benefits before they are eligible for disaster benefits.

### **Who is eligible for state unemployment insurance?**

Generally, an applicant must be unemployed and registered to work at a local Employment Services Office, must be able to work, and must be available for work. In addition, the applicant must have covered wages in at least two calendar quarters, must serve a one week waiting period, can be partly disqualified if job loss was due to simple misconduct without a warning, can be totally disqualified if he or she quit without good cause, lost a job for misconduct after warning, failed a drug test, did something dishonest, or refused employment without good cause.

### **What if an applicant is denied UC or DUA benefits?**

Applicants have the right to appeal a decision within 15 days from the date on the notice. A form for appealing the decision should be sent with the determination. At the hearing, the applicant will have an opportunity to explain to the appeals referee why he or she is entitled to UC or DUA. Applicants should bring witnesses and documents in support of their case.

Source: Alabama Legal Services Manual

## **Employment-related health and pension benefits/COBRA**

Many employers provide group health insurance for their employees and dependents. After a disaster, group coverage may end because the employee relocates, his or her job is terminated, or because the employer is no longer in business. Employees who are no longer covered by a company policy are entitled to continue coverage under a program known as COBRA. However, the premiums may be significantly higher than premiums under the group plan.

Affected individuals should make a choice as soon as possible. Federal laws provide that once a person goes without health insurance for a period of sixty three (63) days, health providers may exclude coverage for preexisting conditions. See 29 U.S.C. 1181; Treas. Reg. § 54.9801-4(b)(2); 29 C.F.R. § 2590.701-4(b)(2); and 45 C.F.R. §

### **What health insurance options are available to individuals whose employers were closed as a result of Hurricane Katrina?**

If an employer has discontinued all of its health care plans, COBRA rights are no longer available and employees will have to seek other coverage. If that employee was a member of an affiliated network of other employers who have not been destroyed by Hurricane Katrina, however, the health plans maintained by those other employers should extend to grant COBRA rights to hurricane victims. Individuals without COBRA rights are encouraged to do the following:

Convert their group plan to an individual plan. Again, however, individuals should be warned that this course of action is likely to result in higher premium payments and less coverage.

Some individuals may also qualify for special enrollment in their spouses' health plans under the portability provisions of HIPAA. The Employment Benefits Securities Administration (EBSA) is continuing to make decisions with regards to health coverage questions in the aftermath of Hurricane Katrina. Individuals are encouraged to visit the EBSA's website for updates at <http://www.dol.gov/ebsa>.

### **How can an evacuee determine what impact the Hurricane has had on their employee benefit plans?**

The U.S. Department of Labor's Employee Benefits Security Administration announced recently that it has launched a Web site providing contact information on employee benefit plan sponsors whose operations have been disrupted by Hurricanes Katrina and Rita. Employers who sponsor benefit plans are being encouraged to update their contact information with the department if it has changed so that "employees, plan participants and their families, as well as the many other support organizations assisting victims of the hurricanes, to reach plan administrators with questions and information related to their retirement and health benefits."

The Website will include a searchable data base that lists pre-hurricane contact information garnered from the Form 5500 Annual Reports filed previously by all employee benefit plans located in the affected disaster areas

Also, the IRS has provided a summary of laws governing Hurricane Katrina relief under KETRA: "Tax Favored Treatment for Early Distributions from IRAs and other Retirement Plans for Victims of Hurricane Katrina."

### **What health insurance options are available to individuals whose employers did not close, but who are no longer employed?**

COBRA applies to employers with 20 or more employees and extends to employees who have been involuntarily terminated for reasons other than gross misconduct. Employers must notify their employees of their COBRA rights, which guarantee individuals the right to purchase health coverage for up to 18 months at their employer's group rate. Once notified, employees have 60 days to accept coverage under COBRA but it should be emphasized that such coverage can be expensive. In fact, individuals under COBRA are responsible for paying up to 102% of the coverage premiums. For more questions on your rights under the U.S. COBRA law, visit <http://www.dol.gov/ebsa/newsroom/fscobra.html>.

### **What if an individual is unable to pay health insurance premiums?**

On September 1, 2005, Mississippi Insurance Commissioner George Dale issued a press release directing all insurance companies doing business in Mississippi to grant a 60-day grace period for the payment of premiums on all types of insurance policies. Therefore, depending on the policy language, if there is coverage "as long as premiums have been paid," there may not be a problem. It is, however, up to the insurance companies to comply. Individuals should contact their insurance companies directly with any questions regarding their specific policies. For contact

information regarding a specific insurance company, visit <http://www.disasterinformation.org/findins.htm>.

The America's Health Insurance Website is also maintaining updated information on measures that are being implemented by various insurance companies to help assist members affected by Hurricane Katrina. Such information includes contact numbers and help-lines for individual companies as well as information regarding premium payment grace periods and other specific concessions. There is currently information on eighteen major insurance providers, which can be accessed at: [www.ahip.org/HurricaneResponse/](http://www.ahip.org/HurricaneResponse/).

### **What access do victims of Hurricane Katrina have to funds held in IRA's, 401(K)'s, and other similar deferred compensation accounts?**

On Monday, September 12, 2005, the Senate Committee on Finance proposed a tax relief package intended to allow displaced hurricane victims to dip into their 401(K)s and individual retirement accounts without penalty. Congress is expected to move quickly to enact the plan, under which the ordinary 10% early withdrawal penalty will be waived for people whose primary residence is located in a federally-declared natural disaster site. People who choose to withdraw these types of funds should be aware that they will still owe regular income tax on the withdrawals; however, payment of those taxes can be spread over a period of up to three years. In addition to the penalty waiver, the proposed package doubles the permissible loan limit to 100% of a person's account balance or \$100,000.00, whichever is less.

While this information may only pertain to people with personal retirement plans, the proposed package also includes significant tax exemptions that will likely benefit all hurricane victims. If the package is approved, all taxpayers affected by Katrina will receive a \$3200.00 personal tax exemption. In addition, people housing hurricane victims will receive a \$500.00 exemption for each individual housed, up to a total of \$2000.00. Finally, the deductible mileage rate for people using their own vehicles for charitable work will be raised to one half of the standard business mileage rate of around \$0.48 per gallon.

### **What public health benefits may be available to storm victims?**

Families who reach certain poverty levels may qualify for TANF - temporary assistance for needy families. Those families who qualify will be able to obtain Medicaid benefits for themselves and their children. Families with children under eighteen (18), very few resources and low income are encouraged to apply. To see if you qualify for Medicaid, visit <http://www.dom.state.ms.us>. In addition, children of families above the poverty level may qualify for coverage under the Mississippi Children's Health Insurance Program (CHIP). See discussion in benefits section.

## **Absence from employment for medical or family reasons**

Under the Family and Medical Leave Act (FMLA), an employee may take up to 12 weeks unpaid leave because of a serious medical condition, or to care for an immediate family member (spouse, parent, or child) with a "serious health condition." During those 12 weeks, the employee's group health benefits through the employer will still be in effect, though other benefits of the employment may not. Additionally, under the Americans with Disabilities Act (ADA), an employee may be entitled to job leave if he or she is disabled and if the granting of the leave would serve as a reasonable accommodation to the disability. Individuals should also check individual state statutes to see if additional leave protection is available for pregnancy or short-term disability leave.

### **Who is eligible for leave under the FMLA?**

Not all employees are eligible under this federal law. The employee must have worked at a covered employer at least 1,250 hours in the past 12 months to be eligible. To be covered, an employer must employ at least fifty employees within 75 miles of the applying employee's worksite.

### **Is there any way to get paid leave under the FMLA?**

The FMLA provides an option for employers to choose to make employees use accrued paid leave. Check with your employer to determine their policies.

### **How should an employee apply for leave under the FMLA?**

Usually, an employee must provide his or her employer with at least 30 days notice before taking an FMLA leave. However, if the need was not foreseeable, then the employee must simply provide notice as soon as practicable; often this means some sort of verbal or written notification within at least one to two days of the time when the need for the leave becomes known.

### **What documentation is required for leave to be granted?**

The employer may ask the employee to provide medical certification to document the need for an FMLA leave; a copy of the medical certification form - WH-380 - is available in the forms section of this guide. If the employer was the individual injured, then the employer may also request a statement from a doctor that the employee is well enough to return to work.

### **Can an employee be fired for taking medical leave?**

No, an employee cannot be fired for going on leave under the FMLA.

### **Who is eligible for leave under the ADA?**

The ADA applies only to those employers with 15 or more employees for each working day in each of 20 or more calendar work weeks in the current or preceding year. An employee is "disabled" within the meaning of the ADA if the employee has a physical or mental impairment with substantially limits one or more "major life activities," such as walking, seeing, hearing, speaking, breathing, learning, working, sitting, standing, lifting, or reaching. Generally, temporary impairments, such as pregnancy, are not protected disabilities under the ADA.

## **Job Searching and Assistance**

### **What assistance is available to hurricane victims looking for a job?**

Individuals in any county in Mississippi which has been declared a disaster area may benefit from a new program which will seek to employ 10,000 displaced workers for the recovery effort. Jobs will involve providing food, clothing, shelter, and humanitarian assistance for victims, as well as demolition, renovation and reconstruction of destroyed public structures, facilities, and lands. To apply for one of these jobs, fill out the application available in the forms appendix and either take it to your local WIN Job Center and mail it to: Mississippi Department of Employment Security, ATTN: Temporary Recovery Jobs, Post Office 1699, Jackson, MS 39215-1699 or fax it to: 601-321-6598.

The US Department of Labor also runs the Job Career One-Stop Center, which is a federal job matching program. This is available to all workers - not just those in disaster-affected areas. Those interested may either go to or call 1-877-US-2JOBS.

Finally, the State of Mississippi encourages all those searching for employment in Mississippi to look for jobs online at <http://www.jobsearch.org/MS>. Job seekers may also attend a Governor's Job Fair; information and dates are available at <http://www.jobfairs.ms.gov/index.html>.

## **Family Law**

# Child support

The amount of a child support award is governed by the Mississippi child support guidelines. The guidelines provide that a noncustodial parent should pay the following percentage of his or her adjusted gross income in support of children: 14% for one child, 20% for two children, 22% for three children, 24% for four children, and 26% for five or more children. Miss. Code Ann. § 43-19-101. The Mississippi statute provides that the guidelines are presumptively correct for persons with an adjusted yearly income between \$5000 and \$50,000.

To determine the proper amount of support, a court must first identify a payor's gross income from all sources. Income may be imputed to a payor who is working at less than full capacity or who conceals or diverts income. The payor's gross income is adjusted for taxes, other mandatory deductions, and support for other children. The statutory percentages are then applied to the adjusted gross income to produce the presumptively correct amount of support. A court may then deviate below or above that amount based on statutory criteria for deviation. A court may deviate from the statutory guidelines based on (1) a child's extraordinary medical, psychological, dental, or educational expenses; (2) other special needs of the child; (3) shared parenting arrangements; (4) the age of the child; (5) independent income of the child; (6) spousal support to the custodial parent; (7) total available assets of the parents; (8) seasonal variations in income or expenses of one or both spouses; and (9) any other adjustment needed to achieve an equitable result. Miss. Code Ann. § 43-19-103. In addition to the basic support award, a court may order payment of expenses not considered to be covered by the basic award, including health insurance, out-of-pocket medical expenses, life insurance, and college expenses. thin the scope of DHS' representation.

## **Are FEMA benefits counted as part of income for purposes of child support?**

As a general rule, only regular income or payments are included in gross income. One-time or sporadic income or payments are not. On the other hand, the Mississippi statute provides that income includes "any other payments made by any person, private entity, federal or state government or any unit of local government." No Mississippi case was found addressing whether FEMA benefits are counted as income for purposes of child support.

## **Are unemployment benefits counted as part of income for purposes of child support?**

Yes. The Mississippi guidelines provide that gross income includes workers' compensation, disability, and unemployment benefits. Miss. Code Ann. § 43-19-101.

## **Should child support be reduced if a payor has become unemployed or otherwise lost income because of the disaster?**

A court may modify child support if a payor's income is substantially reduced or the payor loses a job. The income reduction must be involuntary, must not have been foreseeable at the time of the decree, and must impact the payor's ability to meet reasonable needs. A slight decrease in income does not necessarily require an adjustment of support. *Riley v. Riley*, 884 So. 2d 791 (Miss. Ct. App. 2004). However, a payor may not unilaterally adjust support; only a court may order support reduced.

## **What is the amount of the modified support?**

A court's determination of the proper amount of modified support is governed by the Mississippi child support guidelines. In most cases, courts order modified support at the level of the guidelines. However, a court may deviate from the guidelines if the amount under the guidelines is not sufficient to meet the children's needs, and the court makes specific findings of fact to that effect.

## **When does a modification of support become effective?**

The effective date of a child support modification depends upon whether the modification increases or decreases the

award. A decrease in child support must be made prospectively, because child support payments that become due while a petition for modification is pending are vested and cannot be forgiven or modified. *Thurman v. Thurman*, 559 So. 2d 1014 (Miss. 1990).

### **Is an out-of-court agreement between parents for a temporary reduction in support valid?**

In Mississippi, an out-of-court agreement between parents to modify child support is not ordinarily enforceable. *Armstrong v. Armstrong*, 618 So. 2d 1278, 1280 (Miss. 1993). A payor should not rely on an out-of-court agreement to reduce support – custodial parents have recovered substantial arrearages in spite of their agreement to reduce support. *Houck v. Ousterhout*, 861 So. 2d 1000, 1002 (Miss. 2003) (finding father in arrears in the amount of \$89,000). But see *Dorr v. Dorr*, 797 So. 2d 1008 (Miss. Ct. App. 2001) (suggesting in dicta that out-of-court agreements may be honored in some cases, if the child is not adversely affected).

### **How does a temporary change in custody affect child support?**

Support is modified when a noncustodial parent takes physical custody, even though no court order changing custody is entered. *Frazier v. Burnett*, 767 So. 2d 263, 267-68 (Miss. Ct. App. 2000). No support should be paid for the months in which a child lives with the parent who is legally the noncustodial parent. See *Alexander v. Alexander*, 494 So. 2d 365, 368 (Miss. 1986) (even though no modification petition filed for twenty months). Temporary custody refers to an actual change in living arrangements, not to a situation in which a child stays a week or two with someone other than the custodial parent.

### **What if someone other than the parents has temporary custody?**

Support should be paid by the noncustodial parent to the person who has actual physical custody of a child.

### **How can a parent collect support from a noncustodial parent who has relocated?**

An outstanding order of support may be registered in another state for enforcement. A payee may also send a child support order directly to a payor's employer in another state without first registering the order. The employer must immediately notify the employee and begin withholding. A payee may also, without registering an order, send the payor's state enforcement agency the order and request that it use any available administrative enforcement mechanisms to collect the amount due. The Department of Human Services may seize financial accounts and certain payments such as worker's compensation payments, life insurance, or tax refunds, to satisfy unpaid child support.

### **How is support modified if the parents live in different states?**

Modification of child support in interstate cases is governed by the Uniform Interstate Family Support Act. Under this Act, a support order must be modified by the court that issued the order so long as either parent or the child remain in that state. No other state has jurisdiction to modify the order. Miss. Code Ann. § 93-25-17 (2004). However, the parties may consent to a transfer of jurisdiction to another state. Miss. Code Ann. § 93-25-17(2)(a) (2004). If all parties have moved from the state where the order was issued, the order must be modified by a court in the state where the defendant lives. Miss. Code Ann. § 93-25-17(2)(a) (2004).

### **What if the noncustodial parent cannot be found?**

In every state, the agency responsible for establishing and collecting child support in that state is linked to a national parent locator service. In Mississippi, the responsible agency is the Child Support Division of the Mississippi Department of Human Services.

# **Child Welfare, Foster Care and Youth Court Information**

## **How do I find provisions of the Mississippi Code related to child welfare?**

The Mississippi Code is available online at <http://www.sos.state.ms.us/pubs/MSCode/>. This version is searchable by keyword. Chapter 15 on Child Welfare can be found under Title 43 on Public Welfare.

## **Who administers and supervises public child welfare services?**

The Department of Human Services (DHS). The phone number for the Department of Human Services is (601) 359-4500 or 1-800-345-6347. Their website is at: <http://www.mdhs.state.ms.us/>.

## **What powers do Mississippi counties have over child welfare services?**

The county department of public welfare can provide protective services, assume responsibility for the care of dependent children away from the home who are in need of public care, place dependent children or those without proper care in homes and institutions, and serve as a custodian or guardian through an employee when appointed as provided by law.

## **How can I find a list of children who are in the custody of the State or agencies licensed by the State?**

The State is required by law to maintain a registry of children in custody and their status. The phone number for the Department of Human Services is (601) 359-4500 or 1-800-345-6347.

## **Does Mississippi have a baby drop-off law?**

Yes. A parent may drop off a baby to an emergency medical services provider if the baby is 72 hours old or less. Dropping a child off in such a manner is an absolute affirmative defense to child abandonment. An emergency medical services provider means a licensed hospital that operates an emergency department or an adoption agency licensed by the Department of Human Services.

## **Can children be voluntarily placed in child care?**

Yes, children can be placed in foster care voluntarily as well as by being adjudged as abused, neglected, or abandoned. One of the goals of the administration of the foster care system listed in Mississippi Code § 43-15-13(2)(f) is “assuring safe and adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption.” However the parents of a child placed after July 1, 1998, even a child placed in foster care voluntarily, will only be given up to six-month period of time in which to meet the service agreement with the department for the benefit of the child unless the department has documented extraordinary and compelling reasons for extending the time period in the best interest of the child. If this agreement has not been satisfactorily met, simultaneously the child will be referred to the appropriate court for termination of parental rights and placement in a permanent relative's home, adoptive home or a foster/adoptive home. Mississippi Code §43-15-13(4).

## **What about children classified as destitute or abandoned?**

For children who have been abandoned pursuant to the provisions of Section 97-5-1, termination of parental rights shall be initiated within thirty (30) days and placement in an adoptive home shall be initiated without necessity for placement in a foster home. Mississippi Code §43-15-13(4). However this classification is criminal abandonment of a child and the provisions of §97-5-1 require intent on the part of the legal guardian to abandon the child.

## **How does the foster care system work in the state of Mississippi?**

The Family and Child Division of the State Department of Human Services is charged with administering foster care in the state of Mississippi. The phone number to call for information on foster care is 1-800-345-6347 and the web address is <http://www.mdhs.state.ms.us/fcs.html>. The goals and objectives of the foster care placement system are found in § 43-15-13 of the Mississippi Code available online at <http://www.sos.state.ms.us/pubs/MSCode/>.

All children are provided with an initial shelter hearing within 48 hours and entitled to an administrative review after three months and foster care reviews every six months they are in the state's custody. Mississippi Code §43-15-13(3).

## **What kinds of placements are available for children in the foster care system?**

Several placement options exist in Mississippi foster care including: family foster home, group home, special needs home, special needs institution, or independent living program depending on the child's needs, placement availability, and permanency plan. Child Welfare League of America provides statistics charting the number of children in foster care in the state which is currently around 3000. The site also offers a link to the Mississippi state foster care report card. This includes a graph illustrating the percentage of children in each type of placement- the majority, over 35%, are in a foster home placement, 15% are in group homes. Available at <http://www.childwelfare.com/mississippi.htm>

## **What statutes govern the courts that address child welfare issues?**

Child welfare issues in Mississippi are adjudicated by the Youth Court. The statutes governing the Youth Court – its structure, organization, jurisdiction, and operation – are found in Section 43 of the Mississippi Code, the section governing Public Welfare issues. The principal subsections of the Code that govern the Youth Court are Miss. Code Ann. § 43-21-101, et seq.

## **How is the court organized?**

The Youth Court is contained within the division of the family court of each county court where the county has a family court, or as a division of the county or chancery court where there is no family court. (Miss. Code Ann. § 43-21-107).

## **What jurisdiction does the court have over these issues?**

Generally, exclusive and original Youth Court jurisdiction extends to offenses committed by children (subject to the listed exceptions defined below), and cases that arise from the Youth Court's abuse and neglect intake procedure. The Youth Court has exclusive original jurisdiction in all proceedings concerning a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child. There are statutorily delineated exceptions to Youth Court jurisdiction. Specifically, if the child attempted or committed act punishable by life imprisonment or death if committed by an adult, or attempted or committed an act with a deadly weapon. Certain child abuse cases that arise in the course of a custody action between parents already pending in the chancery court are also exempted from the jurisdiction of the Youth Court. Youth Court jurisdiction continues until child's 20th birthday (Miss. Code Ann. § 43-21-151).

The Youth Court also has a role in overseeing foster care cases. Mississippi law requires the Youth Court or its designee to conduct a foster care review every six months. (Miss. Code Ann. § 43-15-13)

## **Are there special rules governing Youth Court?**

The conduct of Youth Court proceedings is delineated in Miss. Code Ann. § 43-21-203. The proceedings are civil, not criminal (even in cases in which juveniles are tried for committing offenses), and are conducted without a jury. Youth Court hearings are closed, meaning that the general public is excluded, and only those persons who are found

by the youth court to have a direct interest in the cause or work of the youth court will be admitted. Any such person has the right to appear and be represented by legal counsel. The Youth Court has discretion to exclude the child from attending proceedings in a limited set of cases, with the consent of the child's counsel: in neglect and abuse cases, and any portion of a disposition hearing that would be injurious to the best interest of the child in delinquency and children in need of supervision cases.

### **Are Youth Court records confidential?**

Youth Court records are closed to public inspection. (Miss. Code Ann. § 43-21-261). Generally, records involving children may not be disclosed, other than to necessary staff of the youth court. The Youth Court may issue an order, however, specifying the purpose and scope of disclosure, in cases where the Youth Court concludes, in its discretion, that disclosure is required for the best interests of the child, the public safety or the functioning of the youth court. The parent, guardian or custodian of the child (or such parties' attorney) may also inspect the record. Finally, the child may request that counsel inspect the record.

### **Do parents and other adults have a right to legal representation in Mississippi Youth Court proceedings?**

Parents and other adults, who are parties to the proceeding, do have a right to counsel (Miss. Code Ann. § 43-21-201(1)), but if indigent, don't have the right to have counsel appointed by the youth court (See *In the Interest of I.G.*, 467 So. 2d 920, 922 (Miss. 1985)).

1. Each party shall have the right to be represented by counsel at all stages of the proceedings. ...
2. When a party first appears before the youth court, the judge shall ascertain whether he is represented by counsel and, if not, inform him of his rights including his right to counsel. ...

Miss. Code Ann. § 43-21-201.

"Both the statute covering youth court adjudicatory hearings [§ 43-21-557] and the statute governing youth court proceedings generally [§ 43-21-201], impose a mandatory duty upon the judge to ascertain whether each party is represented by counsel and, if not, to inform him of his right to counsel. These statutes do not, however, provide for the appointment of counsel for the parents." *In Interest of I.G.*, 467 So. 2d 920, 922 (Miss. 1985).

### **Do children have a right to legal representation in Mississippi Youth Court proceedings?**

Children have a right to counsel at all critical stages, and if indigent, have the right to have counsel appointed by the youth court (Miss. Code Ann. § 43-21-201(1)).

1. ... If the party is a child, the child shall be represented by counsel at all critical stages. If indigent, the child shall have the right to have counsel appointed for him by the youth court. ...

Miss. Code Ann. § 43-21-201.

"Where 'critically important' actions determining vitally important statutory rights of the juvenile are concerned, the juvenile is entitled to a hearing upon constitutional principles relating to due process with the assistance of counsel." *Patterson v. Hopkins*, 350 F.Supp. 676, 682 (N.D. Miss. 1972), *aff'd*, 481 F.2d 640 (5th Cir. 1973).

### **Are children represented by lawyers, guardians ad litem or volunteers?**

The court is required to appoint a guardian ad litem for the child in certain cases, and has the discretion to make such an appointment in other cases (Miss. Code Ann. § 43-21-121(1)). The court may appoint either a suitable attorney or a suitable layperson as a guardian ad litem (Miss. Code Ann. § 43-21-121(4)). If the court decides to appoint a layperson as a guardian ad litem, the court is also required to appoint an attorney to represent the child (Miss. Code Ann. § 43-21-121(4)). The court, in its discretion, may also appoint a trained volunteer layperson to assist the child, in addition to the appointment of a guardian ad litem (Miss. Code Ann. § 43-21-121(7)). (1)

## **What are the criteria for appointing a guardian ad litem for a child?**

The youth court shall appoint a guardian ad litem for the child: (a) When a child has no parent, guardian or custodian; (b) When the youth court cannot acquire personal jurisdiction over a parent, a guardian or a custodian; (c) When the parent is a minor or a person of unsound mind; (d) When the parent is indifferent to the interest of the child or if the interests of the child and the parent, considered in the context of the cause, appear to conflict; (e) In every case involving an abused or neglected child which results in a judicial proceeding; or (f) In any other instance where the youth court finds appointment of a guardian ad litem to be in the best interest of the child. Miss. Code Ann. § 43-21-121

## **Is there an assigned counsel system for either parents and/or children?**

Although adult parties have the right to counsel, indigent adult parties do not have the right to have counsel appointed by the youth court (Miss. Code Ann. § 43-21-201(1)). Therefore, there is no court assigned counsel system for adult parties to proceedings, including parents.

Children have the right to counsel during all critical stages of a proceeding, and the youth court assigns counsel to indigent children (Miss. Code Ann. § 43-21-201(1)). Consequently, there is an assigned counsel system for children (Miss. Code Ann. § 43-21-121(4)).

## **How do formal court procedures work?**

Formal proceedings may be initiated by petition, for an adjudication that a child is a delinquent child, a child in need of supervision, a neglected child, or an abused child. (Miss. Code Ann. § 43-21-451). The petition must be filed within five days from the date of a detention hearing or shelter hearing continuing custody of the child. Unless another period of time is authorized by the youth court or its designee, in non-custody cases the petition shall be filed within ten days of the court order authorizing the filing of a petition. The proceeding must be scheduled within 90 days of filing the petition, within 21 days if the child is in detention, or within 30 days if the child is in a shelter. (Miss. Code Ann. § 43-21-551).

## **What is a shelter hearing?**

In abuse and neglect proceedings, the Youth Court conducts shelter hearings when certain criteria have been met. (Miss. Code Ann. § 43-21-309). Shelter hearings are conducted when reasonable efforts have been made to maintain the child within his own home, but the circumstances warrant his removal and there is no reasonable alternative to custody, or the circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and there is no reasonable alternative to custody. At conclusion of hearing, court must release child to parent/guardian's custody unless there is probable cause that the Youth Court has jurisdiction.

## **Additional Practice Information**

### **Are there any organizations which represent parents and children in Youth Court proceedings?**

North Mississippi Rural Legal Services represents parents (and sometimes children) in child welfare proceedings of the youth court in 39 Mississippi counties. Contact Information: Toll Free Number: 1-800-898-8731 (Administrative Office) Hurricane Relief Hotline: 1-888-808-8049 <http://www.nmrls.com/>

Mississippi Center for Legal Services represents parents (and sometimes children) in child welfare proceedings of the youth court in the other Mississippi counties. Contact Information: Toll Free Number: 1-800-773-1737 (Administrative Office) <http://www.mslegalservices.org>

Mississippi Volunteer Lawyer Project (A Joint Venture between Mississippi State Bar Association & Mississippi Legal Services Program) Toll Free Number: 1-800-682-0047 <http://www.mvlp.net/>  
[http://www.msbar.org/ms\\_volunteer\\_lawyers\\_project.php](http://www.msbar.org/ms_volunteer_lawyers_project.php)

### **Does the American Bar Association Provide legal assistance for disaster victims?**

The ABA has set up a disaster hotline for those seeking legal help because of Katrina: 1-866-255-4495. The ABA has a website with information for lawyers affected by Katrina and those needing legal help as a result of Katrina at: <http://www.abanet.org/katrina/victims.html>.

### **Where can I find additional information about children in Mississippi Foster Care?**

National Resource Center for Family-Centered Practice and Permanency Planning has established a webpage with numerous links related to child welfare in the Gulf region in the wake of Hurricane Katrina available at [http://www.hunter.cuny.edu/socwork/nrcfcpp/disaster\\_relief.html](http://www.hunter.cuny.edu/socwork/nrcfcpp/disaster_relief.html)

Court Appointed Special Advocates of South Mississippi is a volunteer organization that represents children in the foster care system. Their website has contact information and a fact sheet about the organization. <http://www.oceansprings-ms.com/casa.htm>

### **Where can I find general information, statistics, and progress reports on child welfare in Mississippi?**

The Child Welfare League of America fact sheet on Mississippi can be found at: <http://www.cwla.org/advocacy/statefactsheets/2004/mississippi.pdf>. The United States Department of Health and Human Services Administration for Children and Families' child welfare review on Mississippi can be found at: <http://www.acf.hhs.gov/programs/cb/cwrp/staterpt/ms/intro.htm>.

## **The Role of a Guardian Ad Litem**

### **What is a Guardian ad Litem (“GAL”)?**

GAL literally means “guardian to the thing.”

1. The role of a GAL is one of protecting the best interests of the child.
2. The Mississippi Supreme Court has said that a GAL is charged with a duty to zealously represent the child's best interest. *S.N.C. v. J.R.D., Jr.*, 755 So.2d 1077, 1082 (Miss. 2000)
3. A GAL fulfills its role when the GAL “vigorously advances a position that the guardian believes to be in the child's best interest.” *R.B.S. v. T.M.S.*, 765 So.2d 616, 620 (Miss. App. 2000)
4. A GAL acts as the eyes and ears of the court. A GAL is not a decision-maker; rather the GAL serves the role of investigator, adviser, and source of unbiased opinions for the youth court judge or chancellor that are independent of the motivations that may affect the adult parties. *P.K.C.G. v. M.K.G.*, 793 So.2d 669 (Miss. App. 2001)

### **How does a Best Interests Attorney or GAL differ from a child's attorney?**

The role of a child's attorney is to represent the child, which means to advocate the child's personal preferences even if it is contrary to the best interests of the child.

## **When, or under what circumstances, is a GAL appointed?**

### **Youth Court Proceedings**

Miss. Code Ann. § 43-21-121 provides that the youth court shall appoint a GAL for the child if:

1. The child has no parent, guardian or custodian;
2. The youth court cannot acquire personal jurisdiction over a parent, guardian or custodian;
3. The parent is a minor or a person of unsound mind;
4. The parent is indifferent to the interest of the child;
5. The interests of the child and the parent, in the context of the case, appear to conflict;
6. An abused or neglected child is involved in the judicial proceeding; or
7. Appointing a GAL, according to the court, is in the best interest of the child.

Youth court has exclusive jurisdiction in all proceedings concerning a delinquent child, an abused or neglected child, a child in need of supervision, and a dependent child. Miss. Code Ann. § 43-21-105.

### **Chancery Court Proceedings**

1. Chancery court has jurisdiction to decide matters of paternity, custody, or visitation, absent allegations of abuse, neglect or delinquency. If charges of child abuse arise in the course of a pending parental custody action, chancery court has ancillary jurisdiction.
2. State law mandates that a Chancellor appoint a GAL in the following actions:
  1. Termination of parental rights – Miss. Code Ann. § 93-15-107(1)
  2. Allegations of child abuse, sexual or physical – Miss. Code Ann. § 93-5-23
  3. Contested Adoptions – Miss. Code Ann. § 93-17-8(1)(b). However, a GAL is not required in consensual adoption cases.
3. A Chancellor has discretion to appoint a GAL in the following actions:
  - Modification of custody and child support, *Dep't of Human Servs v. Marshall*, 856 So. 2d 441 (Miss. App. 2003), cert. granted, 852 So. 2d 551, affirmed in part, reversed in part, 859 So. 2d 387 (Miss. 2003);
  - Determination of paternity is at issue, *Williams v. Williams*, 843 So. 2d 720 (Miss. 2003);
  - Matters involving an infant or defendant of unsound mind, including mentally incapacitated and vulnerable adults, Miss. Code Ann. § 9-5-89.
4. A Chancellor has discretion to appoint a GAL in cases where there is no allegation of abuse or neglect or in an uncontested adoption proceeding.

## **Who may be appointed to serve as a GAL?**

1. The youth court shall appoint either a “suitable” attorney or “suitable” layperson who:
  - Is a “competent person;”
  - Has no adverse interest to the child; and
  - Has received child protection and juvenile justice training provided or approved by the Mississippi Judicial College within the year preceding the appointment.
2. If a layperson is appointed as a GAL, the youth court shall also appoint an attorney to represent the child.
3. DHS has a custodial, not a representational role. DHS may request the court to appoint an attorney to represent the child or a GAL to represent the best interests of the child, but may not undertake those roles itself. DHS may give an opinion at a hearing involving the child as to the best interests of the child.
4. Court Appointed Special Advocates (CASA) are volunteers that are trained lay persons who may be appointed by the court to either act as a GAL or help assist children. If properly appointed, CASA workers may give an opinion at a hearing involving the child as to the best interests of the child.

## **At what point in the proceedings is a GAL appointed?**

## Youth Court:

1. When custody is ordered; or at the first judicial hearing regarding the case, whichever occurs first. Miss. Code Ann. § 43-21-121.
2. The court must continue the proceedings for a reasonable time to allow the GAL an opportunity to prepare for the matter. Miss. Code Ann. § 43-21-121.

## What does our court tell us are the duties of a GAL?

1. A GAL must conduct an independent investigation, including interviewing the child. Miss. Code. Ann. § 43-21-121(3).
2. A GAL must make specific recommendations to the court. Miss. Code. Ann. § 43-21-121(3).
3. A GAL must enter reports as necessary with the child's best interest as the "polestar" consideration. Miss. Code. Ann. § 43-21-121(3)
4. A GAL should attend all court hearings.
5. An independent investigation includes:
  - Personally meeting with and observing the child;
  - Personally interviewing the child;
  - Interviewing the child's parents, with consent of counsel;
  - Interviewing other people involved in the child's life.
6. A GAL should submit accurate reports to the court along with specific recommendations.
7. The Court is required to make sure that the GAL is adequately instructed on and properly performs these duties. Miss. Code. Ann. § 43-21-121
8. The Mississippi Supreme Court has said that a GAL should report on the "present health, education, estate and general welfare of the children." *D.J.L. v. Bolivar County Dep't of Human Servs*, 824 So.2d 617, 622 (Miss. 2002).
9. The Mississippi Supreme Court has also said that a GAL "failed to 'zealously' inquire into and protect" the best interests of the child when the GAL: (1) relied on representations of others, such as DHS and CASA workers; (2) failed to talk privately with the children; (3) failed to present an independent report to the trial court; (4) failed to testify before the court, even if the GAL submits to cross-exam by other witnesses. *D.J.L. v. Bolivar County Dep't of Human Servs*, 824 So.2d 617, 622-23 (Miss. 2002).
10. It is important to remember that a GAL is not an adversary party. Miss. Code. Ann. § 43-21-121(3).

## What is a step-by-step way to fulfill that charge?

### Accepting Appointment

1. File an Order Appointing Guardian Ad Litem for The Minor Child And Authorization For Release Of Information.
2. Once you have received a stamped "filed" copy of the Appointment Order, send a copy of the Order to all parties in the case to let them know that you have been appointed GAL.
3. Obtain the File from the Court or the relevant documents from one of the parties.
4. Review the File.
5. Meet with the Child – adapt all communications to the child's age, education level, cognitive development, and cultural background.
6. In a developmentally appropriate way, explain to child that you will:
  - Investigate and advocate the child's best interests;
  - Investigate the child's views about the case and report them to the court unless the child requests that they not be reported;
  - Use information from the child for those purposes; and
  - Will not necessarily advocate what the child wants.

## **Investigation**

1. Review any court files of the child, siblings who are minors or are still in the home, potentially relevant court files of parties and other household members, and case-related records of any social service agency and other service providers;
2. Review the child's social services records, mental health records, drug and alcohol related records, medical records, law enforcement records, school records, and other records relevant to case;
3. Contact lawyers for the parties and non-lawyer representative or CASA workers;
4. Contact and meet with parties, with permission of their lawyers;
5. Interview individuals significantly involved with the child, including, if appropriate, case workers, caretakers, neighbors, relatives, school personnel, coaches, clergy, mental health professionals, physicians, law enforcement officers, and other potential witnesses;
6. Review the relevant evidence personally – do not rely on other parties' or counsel's descriptions and characterizations; and
7. Stay apprised of other court proceedings affecting the child, parties and other household members.
8. Submit a report, including specific recommendations.

## **Findings of Fact**

1. A Chancellor's findings of fact should include a summary of the GAL's qualifications and report.
2. When a court rejects the findings of a required GAL, the court's findings must also include its reasons for rejecting the report. This is not necessary if the appointment was discretionary.

# **A Day in Youth Court: Rights of Children and Their Parents**

## **PROCESS FOR DELINQUENCY CASES**

### **Custody**

A child is taken into custody if a police officer has probable cause to believe that the child:

1. committed a delinquent act
2. is physically dangerous
3. is in danger
4. needs medical or emergency care
5. may be a runaway

### **Detention Hearing**

The youth court judge determines whether the child should be detained or released from custody. The judge does not evaluate the facts of the case; rather, the judge evaluates whether the child is a risk to himself or the community. If the child is released, the youth court judge needs to ensure that the child is released to a responsible adult.

### **Adjudicatory Hearing**

The youth court judge looks at the facts and evidence to determine whether the child committed a delinquent act. The State calls its witnesses and puts on its case. The defense has a right to cross-examine all witnesses called by the State. The defense also has a right to call its own witnesses. After hearing the evidence, the youth court judge then makes a determination as to whether the child is delinquent or in need of supervision.

### **Dispositional Hearing**

The youth court judge decides on the appropriate measure to deter the child from committing the delinquent act again.

In making this determination for a child adjudicated delinquent, the youth court judge considers the following factors:

1. The nature of the offense
2. The manner in which the offense was committed
3. The nature and number of the child's prior delinquent acts
4. The child's need for care and assistance

In making this determination for a child in need of supervision, the youth court judge considers the following factors:

1. The nature and history of the child's conduct
2. The family and home situation
3. The child's need for care and assistance

### **What Are The Youth Court Judge's Options For A Child Who Is Adjudicated Delinquent?**

The youth court judge may:

1. Release the child without further action
2. Place the child in the custody of a child's parent(s), relative, guardian, or any other person
3. Place the child on probation
4. Order terms of treatment designed to help the child and the child's parent(s) or guardian
5. Order terms of supervision (like participation in a program, service, education, civil fine, or restitution)
6. Suspend the child's driver's license for no more than 1 year
7. Give legal custody to: (1) DHS for appropriate placement; (2) any public or private organization that can assume the education, care and maintenance of the child; or (3) DHS for placement in a wilderness training program or a training school
8. Recommend that the child attend and participate in the Youth Challenge Program under the Mississippi National Guard
9. Order the child to the Statewide Juvenile Work Program
10. Order the child to participate in a youth court work program
11. Order the child into a juvenile detention center

### **What Are The Youth Court Judge's Options For A Child That Is Adjudicated A Child In Need Of Supervision?**

The youth court judge may:

1. Release the child without further action
2. Place the child in the custody of the parents, relative, guardian, or any other person
3. Place the child under youth court supervision
4. Order terms of treatment designed to help the child and the child's parents or guardian
5. Order terms of supervision (like participation in a program, service, education, civil fine, or restitution)
6. Give legal custody to any of the following but in no event to any training school: (1) DHS for appropriate placement, which may include a wilderness training program; or (2) any public or private organization that can assume the education, care and maintenance of the child
7. Order the child to participate in a youth court work program
8. Order drug testing

### **If A Child Is Adjudicated Delinquent, Does The Child Have A Criminal Record?**

No. A youth court proceeding is not a criminal proceeding; it is a civil proceeding. The child's "record" is

confidential (meaning it is not a public record).

## **PROCESS FOR ABUSE AND NEGLECT CASES**

### **Custody**

A child is taken into custody if a police officer has probable cause to believe that the child is endangered or when the child's parent, guardian, or custodian is not available to provide for the care and supervision of the child.

### **Shelter Hearing**

The youth court judge determines whether it is in the best interest of the child to remain in their current living situation or whether the child should be temporarily removed from the home.

The DHS worker will discuss the conditions of the child's home and the child's family situation with the court. The child's parent will have a chance to tell the court why the child should go home with him/her.

In cases where there is an allegation of abuse or neglect, the court must appoint a Guardian Ad Litem ("GAL") to ensure the child's best interests are met. A court may also appoint a Court Appointed Special Advocate ("CASA"). The GAL/CASA worker will investigate the facts and circumstances of the case. If the GAL or CASA worker prepares a report, all parties have a right to confront the GAL/CASA worker and to introduce contrary evidence.

### **Adjudicatory Hearing**

The youth court judge looks at the facts of the case to determine if the evidence proves that the child has been abused or neglected. The State calls its witnesses and puts on its case. The parent or parent's lawyer may call witnesses and may cross-examine any witness testifying against him. The child's lawyer may also call any witness. Based on the evidence, the youth court judge then makes a determination as to whether the child is abused or neglected.

### **Dispositional Hearing**

The youth court judge determines what is in the best interests of the child and orders an appropriate measure to insure that the child is not abused or neglected in the future. In making this determination, the youth court judge considers the following factors:

1. The child's physical and mental condition
2. The child's need of assistance
3. The manner in which a parent, guardian, or custodian participated in, tolerated or condoned the abuse, neglect, or the abandonment
4. The ability of the child's parent, guardian, or custodian to provide proper supervision and care of the child

### **Review Hearing**

Within a year after the dispositional hearing, the judge checks to see if the parent has followed the court's orders

### **What Are The Youth Court Judge's Options For A Child That Is Adjudicated An Abused Or Neglected Child?**

The youth court judge may:

1. Release the child without further action
2. Place the child in the custody of his/her parents, a relative or any other person
3. Order terms of treatment designed to help the child and the child's parents or guardian

4. Order youth court personnel, DHS, or child care agencies to help the child and the child's parent, guardian, or custodian secure social or medical services to provide proper supervision and care of the child
5. Give legal custody to any of the following but in no event to any training school: (1) DHS for appropriate placement; or (2) any private or public organization able to assume the education, care and maintenance of the child.

### **Does A Child Need To Be Present For All Phases Of An Abuse And Neglect Case?**

No. The youth court judge has discretion to exclude a child from any phase of an abuse and neglect proceeding. If the testimony or evidence introduced will be difficult for a child to hear, anyone can ask the youth court judge to exclude the child from the courtroom.

## **GENERAL RIGHTS OF CHILDREN AND THEIR PARENTS**

### **What Rights Does a Child Have If He Is Stopped By A Police Officer?**

A child has to provide identifying information such as name, age, and address. The police officer may ask for an explanation of the child's actions if the police officer has probable cause to believe that the child has done something wrong.

### **What Rights Does A Child Have If A Police Officer, Youth Court Prosecutor, Or A Probation Officer Questions A Child?**

The officer must explain the child's rights before questioning him. These rights, known as "Miranda Warnings" include:

1. The right to remain silent;
2. The right to speak with a lawyer once they are taken into police custody or placed under arrest; and
3. The right to a court appointed lawyer if you can't afford one.

Right to remain silent: Anything the child says to anyone (the police, a probation officer, the school principal, etc.) can and will be used against him or her. Even what a child tells his parent can be used against him. The only person that a child has an absolutely confidential relationship with is his lawyer. If a child tells his parent what he has done, the parent could be called to court by the prosecutor to be a witness against her child.

If arrested, the law says that the child does not have to explain what happened. The child does not have to speak to a police officer, probation officer or anyone else. The officer cannot use a child's decision not to talk against him or her in court.

The officer may always ask a child questions, but the only information the child has to give is identifying information such as his or her name, age and address.

Even if a child starts talking to the police about what happened, the child can change his mind and ask for a lawyer at any time. Children should NEVER give confessions or sign a confession without talking to a lawyer first.

Right to an attorney: If a child has been arrested, he or she has a right to a lawyer. The child can – and should – speak to a lawyer before telling anyone what happened. The child should always ask to speak to a lawyer right away. The child or parent should not sign any paper that gives up the child's right to a lawyer.

Right to a court appointed attorney if the child or parent can't afford one: If the child or his parent does not have enough money to hire a private lawyer, the state will appoint a lawyer to represent the child for free.

### **What Rights Does A Child Have When Taken Into Custody?**

A child must be immediately informed of: (1) the reason for his/her custody; (2) the time and place when the detention or shelter hearing will be held; (3) the child's right to counsel; and (4) the rules and regulations of the place at which the child is being held.

If a child is being detained, there must be a hearing within 48 hours of the child being detained so that the judge can decide whether the child should stay in detention or be released.

A child has the right to immediately call their parent(s), guardian, custodian, lawyer, or youth court personnel. After that initial call, a child may use the phone at reasonable intervals.

A child may be visited by counsel and authorized youth court personnel at any time. A child may be visited by their parent(s), guardian, or custodian at any time during visiting hours at least 3 days per week unless the judge determines that it is not in the child's best interests.

When a child is in custody, only a child's lawyer, Guardian Ad Litem, and authorized youth court personnel (such as a youth court intake officer or a youth court prosecutor) may interview or interrogate a child without approval from the judge. Anyone else, including a police officer, must obtain approval from the youth court judge before speaking to a child in custody.

### **What Rights Do Parties Have With Regard To The Detention Or Shelter Hearing?**

Reasonable oral or written notice of the time, place and purpose of the hearing must be given to the child, the child's parent, guardian or custodian, the Guardian Ad Litem and to the child's lawyer. If the child's parent, guardian or custodian cannot be found, the youth court may hold the hearing in their absence.

All parties have the right to present evidence and to cross-examine witnesses produced by others.

### **What Rights Does A Child Have With Regard To The Adjudicatory Hearing?**

1. Right to counsel
2. Right to remain silent
3. Right to subpoena witnesses
4. Right to cross-examine witnesses testifying against him/her
5. Right to appeal

### **What Rights Does A Parent Have In An Abuse And Neglect Proceeding?**

A parent has a right to a lawyer. An adult who wants an attorney to protect his or her interests must provide this for him/herself. If a parent decides that she wants an attorney, she must tell the youth court judge that she needs time to acquire legal assistance.

A parent has the right to represent him/herself. This means that a parent can call witnesses to speak on her behalf and present evidence for her case.

The youth court proceedings will not cause a parent to have a criminal record, but anything a parent says during an abuse and neglect hearing can be used against her in a criminal proceeding if criminal charges are filed.

## **DEFINITIONS**

### **Abused Child**

A child whose parent, guardian, custodian, or any other person responsible for his/her care or support, whether legally

obligated to do so or not, has caused or allowed to be caused sexual abuse upon the child, sexual exploitation, emotional abuse, mental injury, non accidental physical injury or other maltreatment; physical discipline, including spanking, performed on a child by a parent, guardian, or custodian in a reasonable manner is not considered abuse.

### **Child In Need Of Supervision**

A child who has reached his/her seventh birthday and is in need of treatment or rehabilitation because the child: (1) is habitually disobedient of reasonable and lawful commands of his parent, guardian, custodian, and is ungovernable; (2) while being required to attend school, willfully and habitually violates the rules, including habitual truancy; (3) runs away from home without good cause; or (4) has committed a delinquent act.

### **Custody**

The physical possession of the child by any person

### **Delinquent Act**

Any act, which if committed by an adult, is designated as a crime under state or federal law or a county ordinance

### **Delinquent Child**

A child who has reached his/her tenth birthday and who has committed a delinquent act

### **Legal Custody**

The legal status created by a court order which gives the legal custodian the responsibilities of physical possession of the child and the duty to provide him with food, shelter, education and reasonable medical care, all subject to residual rights and responsibilities of the parent or guardian of the child.

### **Neglected Child**

A child whose parent, guardian, or any person responsible for his care of support, neglects or refuses to provide proper and necessary care or support, or education as required by law, or medical, surgical, or other care necessary for the child's well-being; provided, however, a parent who withholds medical treatment from any child who in good faith is under treatment by spiritual means alone in accordance with the practices of a recognized church or religious denomination by a duly accredited practitioner shall not, for that reason alone, be considered to be neglectful.

### **Probable Cause**

The police officer has a strong reason to believe the child committed the crime/charge that he or she is accused of

## **WHAT TO DO IF YOUR CHILD IS ARRESTED**

Getting a call about your child from the police or someone at a detention center can be a frightening experience. This section provides you with information that you and your child should know to better prepare yourself if this happens.

### **When Can A Police Officer Arrest A Child?**

A police officer, sheriff, or probation officer may, without a warrant (an order from the court), take a child into temporary custody if the officer has "probable cause" to believe the child has committed a crime, the child is physically dangerous, the child is in danger, the child is in need of medical or emergency care, or that the child may

be a runaway. “Probable cause” means that the police officer has a strong reason to believe the child committed the crime/charge that he or she is accused of.

### **What Rights Does Your Child Have If He Or She Is Arrested?**

If your child is arrested for a delinquent act, the police officer must tell your child the reason why he or she is being arrested. The police officer must also tell your child that he has a right to speak with a lawyer. Most importantly, your child has the right to call you immediately. And, he should!

If your child is being detained (kept), there must be a hearing within 48 hours of your child being detained so that the judge can decide whether the child should stay in detention or be released. Your child must be told the time and place of this hearing. If your child is not told the time and place of the hearing, contact your local Chancery Judge immediately to find out when and where this hearing is happening.

### **Can A Police Officer Question Your Child If Your Child Is Being Detained?**

No! If your child is being detained, a police officer can not question your child UNLESS the police officer has obtained approval from a judge. There are a few people who don't need approval from a judge to question your child – your child's lawyer, a guardian ad litem (a court appointed advocate for the child), a youth court intake officer and a youth court prosecutor (a lawyer for the State of Mississippi who does not represent your child). If a youth court intake officer or a youth court prosecutor want to question your child, your child's lawyer must be present.

### **What Rights Does Your Child Have If A Police Officer, Youth Court Prosecutor, Or A Probation Officer Questions Your Child?**

The officer must explain the child's rights before questioning him. These rights, known as “Miranda Warnings” include:

- The right to remain silent;
- The right to speak with a lawyer once they are taken into police custody or placed under arrest; and
- The right to a court appointed lawyer if you can't afford one.

#### **Right to remain silent**

Anything the child says to anyone (the police, a probation officer, the school principal, etc.) can and will be used against him or her. Even what a child tells his parent can be used against him. If arrested, the law says that the child does not have to explain what happened. The child does not have to speak to a police officer, probation officer or anyone else. The officer cannot use a child's decision not to talk against him or her in court.

The officer may always ask your child questions, but the only information the child has to give is identifying information such as his or her name, age and address. That's it!

Even if your child starts talking to the police about what happened, the child can change his mind and ask for a lawyer at any time. Children should NEVER give confessions or sign a confession without talking to a lawyer first.

#### **Right to an attorney**

If your child has been arrested, he or she has a right to a lawyer. That means your child can – and should – speak to a lawyer before telling anyone what happened.

You and your child should always ask to speak to a lawyer right away. Do NOT sign any paper that gives up your child's right to a lawyer.

## **Right to a court appointed attorney if you can't afford one on your own**

If you do not have enough money to hire a private lawyer, the state will appoint your child a lawyer for free. These lawyers are called “public defenders” and they are assigned to your child’s case by the youth court judge. If your child is arrested, you should call the public defender at the youth court and ask the public defender to talk with your child.

## **What Will The Police Officer Do With Your Child Once He Is Arrested?**

The police officer has a few options regarding what to do with the child after questioning. The police officer may:

1. Release the child and take no further action.
2. Release the child but refer the child (and parents if child is arrested) to different services in the community that provide counseling, employment, temporary “shelter care” or other help.
3. Release the child and send a request in for youth court action to the juvenile probation officer.
4. Take the child directly into custody to the juvenile probation officer for booking into the juvenile justice detention center to be detained. The police should only detain (keep) a child if the child is accused of committing a serious crime, has a prior juvenile record, or the police can't find a parent to take the child.

**TIP:** Even if you are angry with your child, if you can avoid having him/her in a detention center it is usually much better for your child in the long-run (once a child is kept in detention, the child is much more likely to stay locked up than to get some kind of community-based treatment).

## **If Your Child Is Stopped On The Street By The Police Does She Have To Say Anything?**

- Your child has to provide identifying information such as name, age, and address. The police officer may ask for an explanation of your child’s actions if the police officer has probable cause to believe that your child has done something wrong. But, your child should never give more information than identifying information and should always ask to speak with a lawyer.
- Tell your child to be polite and tell the truth about his/her name, address, and parents, but not to talk about anything else.
- Your child should ask for a lawyer and ask to call you.
- **NOTE:** If your child is in danger and needs help, then your child should call the police and share all important information.

## **Should Your Child Talk If The Police Tells Her That They Will Go Easy If She Talks?**

- **NO!!!** The police may tell your child that they will go easy on her if she talks. The police may tell your child that someone else has pointed the finger at her and unless she talks, it will be worse. It makes no difference. **YOUR CHILD SHOULD NOT TALK!**
- Your child should ask for a lawyer, and ask the officer to call you.

## **Should Your Child Talk To The Police If He Has Not Done Anything Wrong?**

- **No!!!** Your child may have done nothing wrong, and may be completely innocent. This does not matter.
- Your child should not try to talk his way out of trouble.
- Even if your child has not done anything wrong, what he says to the police may be misinterpreted or misused.
- It will not help your child to cooperate with the police without first talking with a lawyer or his parents!

## **Should Your Child Talk To The Police When They Demand A Confession?**

- **NO!!!** All your child needs to say is: “I have the right to remain silent and to talk with a lawyer. I will not talk with you until I talk with a lawyer.”

- Tell your child to show respect, but to keep quiet and continue to ask to speak with a lawyer.
- Before your child confesses to anything, your child's lawyer, his or her parents, or a guardian ad litem must be present.

### **Is A Police Officer At School A Police Officer?**

- Yes! School Police Officers are not school employees. They still work for the police. Your child has the same rights when approached by a School Police Officer as he does when approached by any other police officer.
- If your child is questioned by a School Police Officer, he or she should say: "I have the right to talk with a lawyer. I will not talk to you until I talk with a lawyer."
- If the Principal calls you and asks you to make your child talk, tell the Principal and your child that you want your child to talk with a lawyer before he or she talks with the Principal.
- School officials (like a Principal – NOT a School Officer) may question children in their school without informing them of their constitutional rights.

### **General Tips For Dealing With The Police:**

1. Never resist arrest – no matter how wrong the arrest may seem. Resisting lawful arrest is illegal and is a separate offense for which a child may be found delinquent.
2. You and your child should always be polite and respectful toward the police.
3. If your child is arrested and taken to the police station for questioning, your child should wait until your child's lawyer is present before answering any questions other than identifying information (like name, age, and address).
4. If an arrest is made and charges are filed against your child, you should ask to speak with a lawyer – even if your child denies participating in the alleged crime.
5. Do not tell your child to "just tell the truth" without talking to a lawyer first – even if the police promise everything will be okay – because you won't know what the consequences could be.
6. If the police show up at your home and want to search your house or your child's bedroom, they may not do so without a warrant OR your permission. It is generally NOT a good idea to allow police to search your home without a warrant.

### **If Your Child Is Arrested, What Can You Do To Help?**

#### **Try to see your child immediately:**

If you hear that your child is arrested, you should try to see him right away. You should find out where he is being held and ask to talk with him. If the police will not let you see your child, hand deliver them a letter of protest, and keep a copy for yourself. You can then give a copy of the letter to your child's lawyer.

#### **Remind your child that he should not talk to the police:**

If your child has been arrested, you should tell him not to say anything (aside from identifying information) to the police or the prosecutors until he has spoken with his lawyer.

#### **Don't ask your child to confess to you:**

The only person that your child can have an absolutely confidential conversation with is his lawyer. If your child tells you what he has done, you could be called to court by the prosecutor to be a witness against your child! If you do not want this to happen, do not ask your child to confess.

#### **Make sure your child gets a lawyer:**

After your child is arrested, she will probably go to court. At that time, the court will ask if a lawyer should be appointed to represent your child. Your child has the right to a lawyer, even if you cannot afford one. So, when the

court asks if you want one, make sure you say, "Yes!"

### **Be careful what you ask for:**

Many parents are frustrated by their child's bad behavior and are relieved when he or she gets arrested, feeling that finally their child will get help. Some parents even ask the court to lock their child up. These same parents are often sad and troubled to see that their child just gets punished and does not get any services. Before you ask the court to send your child away, talk with people about the youth court system and about the options. Otherwise, you may get something very different than what you were hoping for.

## **Consumer Issues**

### **Dealing with Public Officials**

#### **What do I need to know about dealing with public officials?**

- Ask for identification from officials who stop at your home.
- Some con artists portray themselves as officials to obtain access into your home. This is a common ploy for burglars and individuals selling expensive and unnecessary repairs.
- Others represent themselves as brokers who say that they can obtain FEMA Funds. FEMA does not charge an application fee.
- Verify credentials of people offering low-interest government loans to confirm that they are affiliated with such

agencies. Call the agency, if necessary.

## **Charitable Donations**

#### **What precautions should I take when considering making a charitable donation?**

If you're thinking about the best ways to provide help to those affected by the Hurricane, the Federal Trade Commission (FTC), the nation's consumer protection agency, has these tips to help you give wisely:

- Donate to recognized charities you have given to before. And be wary of charities with names that sound like familiar, or nationally known organizations. Some phony charities use names that sound or look like those of respected, legitimate organizations.
- Give directly to the charity, not the solicitors for the charity. That's because solicitors take a portion of the proceeds to cover their costs, which leaves less for victim assistance.
- Do not give out personal or financial information - including your Social Security number or credit card and bank account numbers - to anyone who solicits a contribution from you. Scam artists use this information to commit fraud against you.
- Check out any charities before you donate. Contact the Better Business Bureau's Wise Giving Alliance at [www.give.org](http://www.give.org).
- Don't give or send cash. For security and tax record purposes, contribute by check or credit card. Write the official name of the charity on your check. You can contribute safely online through national charities like [www.redcross.org/donate](http://www.redcross.org/donate).
- Ask for identification if you're approached in person. Many states require paid fund-raisers to identify themselves as such and to name the charity for which they're soliciting.
- Ask for written information about the charity, including name, address and telephone number. A legitimate charity or fund-raiser will give you information about the charity's mission, how your donation will be used and proof that your contribution is tax deductible.

- Check out the charity's financial information. For many organizations, this information can be found online at [www.guidestar.org](http://www.guidestar.org) or at GuideStar, 427 Scotland Street, Williamsburg, VA 23185; 757-229-4631.
- Call the charity. Find out if the organization is aware of the solicitation and has authorized the use of its name. If not, you may be dealing with a scam artist.
- Know the difference between "tax exempt" and "tax deductible." Tax exempt means the organization doesn't have to pay taxes. Tax deductible means you can deduct your contribution on your federal income tax return. Even if an organization is tax exempt, your contribution may not be tax deductible. If a tax deduction is important to you, ask for a receipt showing the amount of your contribution and stating that it is tax deductible.
- Ask how your donation will be distributed. How much will go to the program you want to support (as opposed to other programs of the nonprofit), and how much will cover the charity's administrative and telemarketing costs?
- Refuse high pressure appeals. Legitimate fund-raisers won't push you to give on the spot.
- Be wary of charities offering to send a courier or overnight delivery service to collect your donation immediately.
- Consider the costs. When buying merchandise or tickets for special events, or when receiving "free" goods in exchange for giving, remember that these items cost money and generally are paid for out of your contribution. Although this can be an effective fund-raising tool, less money may be available for the charity.
- Be wary of guaranteed sweepstakes winnings in exchange for a contribution. According to law, you never have to donate anything to be eligible to win.

### **Where should I lodge a complaint if I believe that an organizations has misrepresented its charitable intentions or otherwise has operated improperly?**

- If you believe an organization may not be operating for charitable purposes, is making misleading solicitations or is ignoring requests to be placed on a "do not call" list, contact your state Attorney General, your local consumer protection office or the Federal Trade Commission.
- The FTC works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint or to get free information on consumer issues, visit [www.ftc.gov](http://www.ftc.gov) or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.
- Link: <http://www.ftc.gov/bcp/online/pubs/tmarkg/charity.htm>

## **Phone and Internet Scams**

### **How can I protect myself against phone-scams?**

- Dishonest telemarketers call flood victims offering "flood-safety kits" for hundreds of dollars.
- Do not give your credit card or checking account number to a telemarketer you don't know.
- Ask for details in writing and be wary when the term "government approved" is used.
- Do not fall for prize promotions where you have to buy something to get a prize.

### **What about internet scams?**

One should also be aware of the possibility that many websites have popped up in the wake of Hurricane Katrina. In some cases, these sites may advertise for what are in fact phony charities or otherwise are unscrupulous attempts to defraud people affected by or concerned with Hurricane Katrina.

## **Home, Car and Other Repairs**

**If I need to have repairs done to my home, what steps can I take to protect myself against scams and what steps should I take with regard to obtaining a fair price and ensuring that the job is done with sufficient quality and what types of illegal and unscrupulous practices should I be on the lookout for?**

- Get at least three estimates (bids). Be certain each contractor bids on exactly the same work. If one contractor bids on more work than others, make a note of it. In any event, all bids should be itemized.
- Know who you are dealing with. Find out the contractor's address and verify it. Ask for and check references (previous customers, bank references). Inspect work done for others when possible. Check identification of workers.
- To determine whether/not a contractor is indeed legitimate, you may call the Mississippi State Board of Contractors at 1-800-880-6161, or visit their website at [www.msdoc.com](http://www.msdoc.com).
- A reputable contractor can usually charge building materials and does not normally require a large down payment. Where one is required, it should not exceed 10%-25% of the total price.
- Be specific. Have samples, model numbers, pictures or anything else that will show the contractor exactly what you want. If you don't specify the quality of materials in the contract, you are leaving it up to the contractor to decide what material will be use.
- Be certain the materials you have selected are what you want. Changing your mind in the middle of a construction project is costly. If you do change your mind, be prepared to pay (extra).
- No one is required to guarantee his work or product. If you want to guarantee (warranty), make sure it is written in the contract and you understand it. If you are dissatisfied with any part of the work speak-up before the job is completed.
- With foundation work, inspect the work before it is covered. If possible, get an independent, qualified individual to check any work of this type before it's covered and paid for.
- If your basement has been flooded it may or may not need to be re-waterproofed.
- If possible, use fans to help dry out the basement and wait until the next heavy rain to see if there is a leak before contracting a waterproofing contractor. Do some research and get several opinions as to how the problem can best be handled before you take any action.
- Ask the waterproofing contractor for a written analysis of the problem, details on how they intend to correct it and a breakdown of all costs before you sign a contract.
- Review the terms of the written guarantee before agreeing to have the work done and note which conditions are and are not covered. Remember, only those basement areas that are waterproof treated will be covered.
- Under most circumstances, the pressure pumping method of waterproofing is usually not effective and should not be used unless you have a verified engineer's analysis stating it is the most effective method to correct the problem.
- Accept no verbal agreements. Any changes in the contract should be written out and initialed by both parties.
- Contracts should specify a beginning and completion date, exact description of job to be done, total cost of job, exact schedule for payment and warranty or guarantee which can be expected. (If contract is for an hourly rate or on a "cost plus" basis, get an estimate of total cost.)
- Do not pay the contractor or repairman the full amount due until the job has been completed satisfactorily.
- Keep a signed readable copy of the contract in safe place.
- NOTE: Often on large projects payment is based on portions of completed work. Such as: 25% of total payment is due when 25% of the work has been satisfactorily completed. or more information call 1-800-281-4418 (toll free in MS) or 601-359-4230.
- To determine whether/not a contractor is indeed legitimate, you may call the Mississippi State Board of Contractors at 1-800-880-6161, or visit their website at [www.msdoc.com](http://www.msdoc.com).
- Link: <http://www.ago.state.ms.us/pressreleases/hurricanetips.pdf>
- Contact:  
Attorney General's Consumer Protection Division  
P. O. Box 22947  
Jackson, Mississippi 39225-2947  
(601) 359-4230 or 1-800-281-4418 (toll-free in Mississippi only)

**How can I protect against auto repair scams?**

- If your car was submerged or standing in a foot or more of water for more than hour, have the car checked out by a car dealer or a repair shop.
- Even if the car runs, there may be hidden damage that could pose serious problems at some later date.
- Be sure to get detailed written estimates and keep copies of all receipts and invoices.
- If you are in the market to buy a used vehicle, inspect it carefully. Look at hidden parts or crevices to check for mud or silt, an indication the car has been water damaged.

## **Identity Theft**

### **How can I minimize my chances for becoming a victim to identity theft when I am most vulnerable?**

- Since "scam" telemarketers may contact you, be very hesitant before giving out personal information over the phone to any telemarketer you are unfamiliar with or do not know.
- Always ask for details in writing about the service and be wary when the term "government approved" is used by the telemarketer.
- In the near future, order your credit report from the three major credit bureaus, Equifax Information Services, LLC, Experian, ("TRW"), and TransUnion, and review the report to make sure that no suspicious activity has occurred.
- Also ask the three major credit bureaus to remove your name from all marketing lists that they control.
- Contact your local telephone service and ask that your name, address and phone number be removed from the telephone book, reverse directories and city directories.
- Change your driver's license number so that it is not your social security number. This can be done through the offices of Mississippi Department of Public Safety, Drivers License Bureau.

### **If I realize that my identity has been stolen, how do I respond?**

- You must immediately contact your local police force or sheriff's department and inform them of your situation.
- Next, inform the creditors of your situation and point out all accounts that you feel have been affected.
- Alert the fraud departments of all major credit bureaus of your situation.
- File a report with the Federal Trade Commission at [www.consumer.gov/idtheft](http://www.consumer.gov/idtheft) or call at 1-877-IDTHEFT (438-4338)
- Complete the identity theft affidavit located at the following web address: [www.ago.state.ms.us/divisions/consumer/idtheft.pdf](http://www.ago.state.ms.us/divisions/consumer/idtheft.pdf) and mail to Office of the Attorney General, Consumer Protection Division, P.O. Box 22947, Jackson, MS 39225-2947.
- An additional step may be to consult with a private attorney about your situation.

#### **Important Links:**

- <http://www.ago.state.ms.us/divisions/consumer/disaster.php>
- <http://www.ago.state.ms.us/divisions/consumer/idtheftbook.pdf>
- <http://www.salliemae.com/katrina/index.html>

## **Hurricane Katrina and Current/Future Credit Card Debt**

### **How are victims of Hurricane Katrina identified and classified by banks, credit card companies, and other financial institutions?**

Financial institutions are identifying individuals affected by Hurricane Katrina by the zip code of their primary residence. The Federal Emergency Management Agency has teamed up with the United States Postal Service to identify areas hardest hit by the hurricane and flag them by their zip codes. This way, it is easy for financial

institutions to determine, and verify if their clients have been affected by the hurricane. This system of identifying affected areas by zip code has been the standard used for modern natural disasters that occur in the U.S. today, and has not differed significantly for Hurricane Katrina. To find out whether or not a zip code has been declared a disaster area, log onto: [www.fema.org](http://www.fema.org).

### **Have there been an increase in Credit Card scams or fraud as a result of Hurricane Katrina?**

As in most disaster situations, there tend to be an increase in fraud and scams, however, credit card companies are aware that this activity increases with disaster situations, and use counteractive measures to detect and eliminate increased fraudulent activity. For instance, American Express' fraud detection division, labeled their "Security Team" has been closely monitoring the accounts of Hurricane Katrina victims for any possible unusual activity. By doing so, they have been able to prevent their card holders from paying for others' illegal activities. For more information on American Express security measure, contact their division for Communication and Community Affairs at: (954) 503-3091.

## **Credit Card Company Contact Information**

### **What are credit card companies and banks doing to help alleviate the current and future debts of their clients?**

Overall, the major credit card companies are using similar measures to help customers manage their debt both in the immediate aftermath, and to some extent long term. Most companies are offering some type of temporary payment suspension for between 30 and 90days for their affected customers to help manage current debt. And to help mitigate their customers' future debt, most companies have begun waiving certain service charges and fees. Specific company offers are listed below, based in large part from information gathered through The Financial Services Roundtable. Additional information can be found at their website: [www.fsround.org](http://www.fsround.org). For more information on what your credit card company can do for you, please contact the companies directly.

All financial institutions, credit card companies included, are urging anyone affected by Hurricane Katrina to get in touch with them immediately. This way, the company can work with the client and establish a debt payment plan as early as possible. The earlier a client contacts their financial institution, the more assistance the institution can offer.

### **AMERICAN EXPRESS**

[www.americanexpress.com](http://www.americanexpress.com) (800) 333-2639

American Express is currently providing assistance not only to their own card members, but to the families of their card members as well. They have waived late fees for all current balance payments, as well as current and future overdraft fees (for a limited period of time). In addition, American Express has automatically granted extensions of credit to their affected customers. Also, card members who have family affected by the hurricane can use their credit cards as debit cards, draw upon their accounts, and wire the money to family through a deal worked out with Western Union and Moneygram. From a less financial perspective, American Express has been actively involved in helping their clients acquire available lodging, facilitating check-in, and even helping with prescription replacement and medical referrals.

### **CAPITAL ONE**

[www.capitalone.com](http://www.capitalone.com) (800) 955-7070

The Capital One Financial Corporation has been helping their clients by waiving fees for service charges as well as past due, and overdraft fees. They have also been giving additional consideration to customers affected by the

hurricane that live outside of the zip codes designated as disaster areas. Additionally, Capital One has gone the extra step to avoid customer annoyance by suspending all outbound telemarketing calls to customers in designated disaster areas, based on area codeii.

## **CITI GROUP**

[www.citibank.com/us/cards](http://www.citibank.com/us/cards) (800) 950-5114

The Citigroup has decided to review their actions every 30 days to help customers. Currently, they are suspending payments, waiving interest and fees, and suspending collection calls on all accounts affected by the hurricane. In addition, Citigroup is no reporting any negative activity to any credit bureau, and disaster lines of credit will be implemented. Also, cash advance fees have been waivediii.

## **DISCOVER**

[www.discovercard.com](http://www.discovercard.com) (800) 347-2683

Discover Card has offered debt relief in the form of payment relief, and emergency replacement cards and PIN numbers. Customers with Discover accounts are urged to contact Discover as soon as possible so they can work with the customer and try to accommodate their individual needsiv.

## **MASTERCARD**

[www.mastercard.com](http://www.mastercard.com) (800) 622-7747

MasterCard International has been waiving current transaction fees on donations made from U.S. issued accounts to the Red Cross and AmeriCaresv.

## **VISA – USA**

[www.visa.com](http://www.visa.com) (800) 847- 2911

Visa USA has established an emergency hotline which any cardholder with a zip code in the disaster region can access: (800) VISA-911 (listed above). Through this hotline, members can obtain emergency lost card reporting/replacement, emergency cash, and emergency messaging with other Visa members. Visa has also set up mobile ATM's to go into affected areas, so their members can access funds directly. Visa fraud detection department has been closely monitoring member accounts for any signs of fraud associated with the hurricanevi.

# **Banking Issues**

## **What do I need to do if my bank was destroyed?**

- The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller, the Office of Thrift Supervision, and the Conference of State Bank Supervisors are reminding the public that deposit insurance is in full force and that money in FDIC or NCUA insured banks are protected.
- Try calling your bank phone number as many banks have provided information via telephone.
- You may also contact FEMA or Red Cross for assistance if you are not able to reach your bank.

## **How should I go about banking at a place of relocation?**

If you are trying to bank in an area of relocation, it will be concerned as to whether you have sufficient funds in your account. It will need to contact your bank to verify funds. Also, you may have your bank wire funds to the relocation bank and establish an account there.

### **What if I have lost my identification and/or banking information?**

- The U.S Department of the Treasury has encouraged banks to ease identification normally needed to make banking transactions.
- Banks are encouraged to call the Social Security Administration's hotline (1-800-772-1213) with the customer's information to verify identification.
- Please see other relevant portions of this manual such as Document Replacement and the Banking Appendix containing bank contact information
- Banks will be granted flexibility should a check forgery reclamation action arise.

### **Will my deposits and/or drafts still be functioning normally? What if I am not able to pay them?**

- Regulators are encouraging banks to work with customers that were heavily affected by Hurricane Katrina.
- The FDIC has asked banks to allow some loan payments to be skipped without affecting credit history, extend the term of loans, and to restructure loans.
- Do NOT skip a payment without trying to contact your bank first. Please see the Banking Appendix containing bank contact information.

### **What happens if I had property in a safety deposit box at my bank? Will insurance cover it?**

- Deposit insurance does not cover contents in your safety deposit box. Contact your bank to determine whether contents are salvageable.
- Many banks' safety deposit boxes are within vaults and are well protected from water and fire damages.

### **Can I still have replacement documents and/or monthly account statements sent to me at a temporary address?**

- Yes. As long as you have a fixed address, you can contact the U.S. Postal Service either by phone, 1-800-ASK-USPS, or online, [www.usps.gov](http://www.usps.gov), and request that your mail be sent to a fixed address.

### **How will I get my Social Security check?**

- If you are not in your area, you may want to open an account in the area you are in and contact the Social Security Administration ("SSA") with your banking information.
- SSA is also experiencing some difficulty in those areas affected by Hurricane Katrina and banks are being asked to honor- after prudent verification- handwritten, typewritten, and laser SSA checks issued in Louisiana, Mississippi, and Alabama offices.

### **What are the policies for cashing U.S. Treasury Checks for FEMA Disaster Assistance and Federal benefit payments? (For institutions/depositories)**

- This policy will remain in effect until 60 days after September 14, 2005 (Monday, November 14, 2005).

- Because of the difficulty in confirming the identities of those receiving U.S. Treasury checks, the U.S. Department of the Treasury is providing assistance for those institutions who have conducted prudent investigations into an individual's identity.
- A depository will not be liable for cashing a Treasury benefit or check bearing a forged indorsement if:

1) the depository verifies an identity by calling the number provided by the issuing agency, and 2) the depository has used prudent effort in verifying the identity such as: inspecting bills and leases, checking other forms of I.D. including passports, and conducting an electronic search and searching public databases or other online sources.

- Please view the security features on Treasury checks by visiting <http://fms.treas.gov/checkclaims/index.html>. Please contact the Federal Reserve's Bank of Richmond's Treasury Check Assistance should any questions arise as to the authenticity of a U.S. Treasury check: (804) 697-2605.
- For more information, please view the official notice at: [http://fms.treas.gov/katrina\\_notice\\_depository\\_institutions.html](http://fms.treas.gov/katrina_notice_depository_institutions.html).
- Also, for clarification of customer identification/"Know Your Customer" Standards, please visit:

<http://www.federalreserve.gov/boarddocs/srletters/2005/sr0515.htm>.

Please contact the following for more information:

Federal Deposit Insurance Corporation (FDIC), [www.fdic.gov](http://www.fdic.gov), 1-800-ASK-FDIC

Federal Reserve, [www.federalreserve.gov](http://www.federalreserve.gov), 1-800-827-3340

Social Security Administration, [www.socialsecurity.gov](http://www.socialsecurity.gov), 1-800-772-1213

Mississippi Department of Banking, [www.dbcf.state.ms.us](http://www.dbcf.state.ms.us), 1-601-359-1031 or 1-800-844-2499

Louisiana Office of Financial Institutions, [www.ofi.louisiana.gov](http://www.ofi.louisiana.gov), 1-225-925-4660 or 1-866-783-5530

State of Alabama Banking Department, [www.bank.state.al.us](http://www.bank.state.al.us), 1-334-242-3452

## Immigration Law

INFORMATION FOR NON-CITIZENS DISPLACED BY KATRINA & RITA

### IMMIGRATION BENEFITS

#### **Q: I lost all my immigration papers, how do I replace them?**

Local USCIS offices across the country have a supply in hand of the forms necessary to replace immigration papers and will accept walk-in applicants. No INFOPASS appointments are needed but Hurricane victims must identify themselves as such when filing the application at a USCIS office. The USCIS will verify information through their database but bring any documents you may still have with you. Non-Hurricane victims are asked to use the traditional methods of replacing documents (see CIS website).

- To Replace a re-entry permit, travel document, or Advance Parole permission: complete Form I-131.
- To Replace your EAD (work permit ) complete Form I-765.

- To Replace your naturalization certificate complete Form N-565
- To Replace your green card, complete Form I-90 and bring two passport photos
- To Replace your Form I-94 (non-immigrant entry doc) file form I-102

**Q: I lost my work-permit or green card, can I still work legally?**

You should apply to replace your EAD (work permit) or green card. However, USCIS has suspended the I-9 requirements for 45 days (starting Sep 6, 2005). This means that individuals are not required to present proof of eligibility to work prior to working. This policy will allow you to work while you are waiting for your work permit or green card to arrive.

**Q: I lost my documents but can't afford the filing fees, will you waive them?**

Normally, USCIS requires documentation to show inability to pay a fee. However, Katrina & Rita survivors may not have any documentation. USCIS has therefore instituted a policy that it will grant waivers to those who show an inability to pay based on an affidavit or unsworn declaration. Fee waivers will be decided on a case-by-case basis and are discretionary so you should do your best to explain your financial situation.

**Q: I need to file an application for an immigration benefit and I've been displaced by the Hurricane, do I file it in person?**

If you need to file an application or petition for anything other than a replacement document, follow the regular filing procedures. USCIS has not announced what they will do in situations where an individual missed a filing deadline (e.g. missed the I-752 removal of conditional resident deadline). However, it may be a good idea to attach an affidavit with your application explaining that you were displaced by the Hurricane and were therefore unable to file on time.

**Q: Do I need to notify CIS that I have been displaced?**

All non-citizens are required to file AR-11 each time they move. However, USCIS has hinted that you can wait to file the AR-11 until you are settled in an address you know you will be residing at for at least 30 days. For instance if you are currently in a shelter and looking for a permanent place, you don't have to file AR-11 listing the shelter as your address. BUT, if you are waiting for communication from USCIS or the Immigration Court, it would be a good idea to submit an address where you can receive correspondence (a "c/o" address).

**Q: I missed my interview because of the hurricane, what can I do?**

Contact USCIS customer service at 1-800-375-5283 to have them re-schedule your interview.

**Q: I had a pending court case, what effect has the hurricane had on my case?**

The New Orleans Immigration Court and the Fifth Circuit Court of Appeals closed due to the hurricane. The BIA also suspended work on cases originating from the Hurricane-affected areas. More information will be released in the near future, but most cases will receive new filing deadlines and hearing dates. See the section below on Procedural Effects for more information.

**Q: How can I keep myself informed on new services and policies relating to the Hurricane?**

The USCIS website at <http://www.uscis.gov> will maintain information regarding policies and services to displaced individuals. The Department of Homeland Security has information as well. Their website is [www.dhs.gov](http://www.dhs.gov). Several non-governmental agencies also have information on the websites, including: The American Immigration Lawyers Association at <http://www.aila.org> (includes a means to tracking down displaced attorneys); The Association of

International Educators <http://www.nafsa.org> (information for displaced international students); And The National Immigration Law Center <HTTP://www.nilc.org> (includes information on state public benefits).

**Q: I was applying for status through my wife but she died during the hurricane, can I still immigrate?**

Yes, there are laws that pre-date the hurricane that allow individuals to continue their immigration process even if the petitioner has died. The request must be done timely, for instance, widows/widowers of U.S. citizens the application must be submitted within two years of the death.

**Q: What will happen to foreign students whose school has been affected by the Hurricanes?**

Foreign students should attempt to contact the designated school official (DSO) if available. If the DSO is not available, please contact the SEVIS office at 202-305-2346 or email [SEVIS.source@dhs.gov](mailto:SEVIS.source@dhs.gov) and include date of birth, SEVIS ID# and school information. Foreign students should let the SEVIS officer know if they plan to delay entry until the school is operational, or transfer to another educational institution. New "F" or "M" students who were unable to contact their designated school will receive a new report date and new I-20 if the school is operational. Students who transfer to a new school should contact the school directly for the new I-20. This particular transfer will not be subject to a new SEVIS fee. Still, students may need to obtain a new visa that indicates the new school. Students will also not have to pay a new MRV fee. SEVIS has detailed information on its website at <http://www.ice.gov/SEVIS> concerning the following issues: \*Transfers \*Transcripts \*Status concerns \*Residence and money problems \*Lost documentation \*Address changes \*OPT issues \*Fall enrollment problems \*Contact information

**Q: What should students do if they are unable to contact their school?**

F-1 or M-1 student who are not able to contact his/her school should contact [SEVIS.source@DHS.gov](mailto:SEVIS.source@DHS.gov) or at (202) 305-2346.

## **PUBLIC BENEFITS**

**Q: What disaster benefits are undocumented immigrants eligible for?**

All immigrants, regardless of status, are eligible for short-term, noncash, in-kind, emergency disaster relief and similar services. Although undocumented immigrants will not be personally eligible for other FEMA benefits, an ineligible immigrant can apply on behalf of an eligible child or other household member who has an eligible immigration status. For example, an undocumented parent can apply for the Individual and Family Grant Program on behalf of their U.S. citizen or child.

**Q: If an undocumented household member applies on behalf of an eligible family member, will FEMA ask questions about the non-applying individual's immigration status?**

According to their website, FEMA will not be gathering any information about immigration status in this circumstance. <http://www.fema.gov/rrr/dafaq.shtm#0>

**Q. What categories of immigrants are eligible for FEMA's Individual and Family Grant Program?**

The categories of immigrants eligible for this program are similar to the categories eligible for a variety of mean-tested federal benefits. Immigrants designated under federal law as "qualified" immigrants or "victims of trafficking" are eligible for this program.

**Q: What categories of Immigrants are eligible for Disaster Unemployment Assistance?**

The categories of immigrants eligible for this program are similar to the categories eligible for a variety of mean-tested federal benefits. Immigrants designated under federal law as “qualified” immigrants or “victims of trafficking” are eligible for this program.

**Q: What categories of immigrants are eligible for Small Business Administration loans?**

A: The categories of immigrants eligible for this program are similar to the categories eligible for a variety of mean-tested federal benefits. Immigrants designated under federal law as “qualified” immigrants or “victims of trafficking” are eligible for this program.

**Q: What is the definition of “Qualified” immigrant?**

A: A “qualified” immigrant, as pertaining to prerequisites to obtain certain kinds of federal aid is: Lawful permanent residents, refugees, asylees, persons granted withholding of deportation/removal, conditional entry (in effect prior to Apr. 1, 1980), or paroled into the U.S. for at least one year, Cuban or Haitian entrants, and battered spouses and children with a pending or approved self-petition for an immigrant visa, or an immigrant visa filed for a spouse or child by a U.S. citizen or LPR, or an application for cancellation of removal/suspension of deportation, whose need for benefits has a substantial connection to the battery or cruelty. Additionally, a parent or child of such a battered child/spouse are also “qualified.”

**Q: What is a “victim of trafficking”?**

A: A “victim of trafficking” is an individual who has been subject to a “severe form of trafficking in persons” as defined by the Victims of Trafficking and Violence Prevention Act of 2000. Severe forms of trafficking include sex trafficking and the forced or fraudulent recruitment, harboring, transport or provision of a person for labor or services that subject the person to involuntary servitude, peonage, debt bondage, or slavery.

**Q: What categories of immigrants are eligible for disaster Food Stamps**

The federal government is providing disaster-related Food Stamps in two separate ways. First, they are providing one month of Food Stamps to every family that was displaced by the disaster, and second, they have significantly simplified the application process for obtaining three months of benefits. For the first program, state officials are granting one month of Food Stamp benefits to all individuals who lived in a federally-declared disaster area in Alabama, Louisiana or Mississippi who moved either within their state or to another state and who apply by October 31, 2005. There are no other eligibility requirements. Nevertheless, the federal government told states that if the household volunteers information that would regularly render them ineligible (such as stating that they are in an ineligible immigration status or stating that they are a college student not doing work study) the state cannot issue the benefit. For the purpose of the program allowing receipt of three months of benefits, the household will be asked about their immigration status.

**Q: For eligible immigrants, do they have to produce proof of their immigration status in order to obtain disaster benefits**

In general, the federal government is temporarily allowing state agencies to accept statements as to immigration status, as well as other eligibility factors, without demanding documentation. However, the government is also generally requiring that individuals cooperate with officials in verifying both evacuee and eligibility status. Most agencies are deferring any additional requirements until early 2006.

**Q: Are individuals without legal status in danger of being deported if they obtain disaster-benefits.**

The answer to this question is complicated. On the one hand, FEMA's website clearly states that the agency will not be collecting this information. However, in contrast to the reaction of federal officials after September 11th, the federal government has indicated that it could use information collected in the process of providing disaster relief in future deportation proceedings. Joanna Gonzalez, a Department of Homeland Security spokeswoman recently stated that, "[t]he administration's priority is to provide needed assistance: water, food, medical care, shelter . . . However, as we move forward with the response, we can't turn a blind eye to the law." Immigrants who disclose their status to federal officials therefore appear to face some risks.

**Q: If immigrants accept disaster benefits, are they at risk of being considered a "public charge"?**

No. Accepting disaster assistance will not have a negative consequence on immigration status as long as the assistance is not obtained fraudulently.

## **Procedural Affect(s) of Hurricane Katrina on ICE and EOIR**

### **Introductory Note:**

As of September 27, 2005, ICE (part of DHS) and EOIR (part of DOJ) have been, by all accounts, flexible, but have not provided a great deal of in-writing, concrete changes to the rules and regulations regarding enforcement and litigation that people can rely on to at least some degree of legal certainty. In the ICE and EOIR sections, I have laid out what we have actually been told by the relevant government agency or authority.

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

ICE has released a fair amount of information related to the affect of Hurricane Katrina on international students. For background, the Student and Exchange Visitors Program (SEVP) is a division of ICE. SEVP maintains SEVIS (the Student and Exchange Visitors Information System) which is a web-based system to maintain and disseminate information on international students and exchange visitors in the U.S.

[SEVIS] has received numerous questions regarding international students who have been impacted by Hurricane Katrina. ICE has established a toll free number (800-961-5294) for students who are attending a school that is affected by Hurricane Katrina and are unable to contact their Designated School official. Students can also email SEVIS at [SEVIS.Source@dhs.gov](mailto:SEVIS.Source@dhs.gov). (source: ICE website)

As expected, advocacy groups have requested (via petition) that DHS place a moratorium on deportations with regards to the present crisis. As of date of publishing, DHS has not acted specifically on this request and, to date, no such moratorium is in place.

### **Executive Office for Immigration Review (EOIR)**

The Immigration Court in New Orleans is closed until further notice, and thus filings cannot be made there. The BIA has suspended briefing for all cases arising out of New Orleans. (as of Sept. 27, 2005 DOJ/EOIR website reports only that the N.O. Immigration Court is closed and the BIA has suspended consideration for all cases arising out of N.O. – the website promises updates "as warranted.")

EOIR is working on a uniform policy for filings, and hopes to release something soon. All specific inquiries thus far regarding deadlines affected by Hurricane Katrina have been met with great flexibility and understanding. (source: AILA)

## **Criminal Law**

## **Prisoner and Fugitive Issues**

**If we have a client who is looking for a loved one who was incarcerated in New Orleans before Katrina, where do we look?**

Call The Department of Corrections at 225-342-3998 or 225-342-5935 between 7:30 AM and 8 PM. (The other organization that was given a copy of the original list of where evacuees were relocated is LACDL [the Louisiana Association of Criminal Defense Lawyers]. But their list will not be as up to date as DOC. Their number is below.)

**If you have a client who survived Katrina and has a horror story about what happened while they were in jail, what do you do?**

The ACLU National Prison Project is currently gathering information regarding the treatment of those incarcerated in the New Orleans Parish Prison when the Hurricane struck. Human Rights Watch is also documenting abuses. Their contact numbers are below. There have been a number of newspaper accounts describing the ordeal that some of the prisoners went through as the water rose through the Orleans Parish Prison.

**If someone evacuated from the Parish Prison was told by the judge that he or she can post bail to get out, where does your client bring the money if s/he wants to post bail or bond?**

Post bond at the New Orleans Clerk of Court. The new number and location for the New Orleans Clerk of Court:  
Temporary Clerk of Court Address for New Orleans Parish

Kimberly Williams Butler, Clerk Of Court for New Orleans  
1885 North 3rd Street  
Baton Rouge, LA  
Tel. 225-326 6771

**If a client had a court date pending in New Orleans for sometime between the date Katrina hit and the present, what should you advise the client?**

The client probably has not missed a court date because the court was suspended following Katrina. Before traveling to New Orleans, try to get up to the minute information from the New Orleans clerk's office or the LACDL office (addresses posted below).

**If I have a client that has an outstanding warrant in New Orleans and is thinking about turning himself in, what do I tell him or her about whether they will get a free lawyer when they go to New Orleans and whether their matter will be addressed in a timely manner? (Note that the Extradition Section below deals with the alternative, namely, what happens if your client does not turn herself in)**

As of the writing of this Manual, the criminal justice system in New Orleans is overloaded and woefully behind in processing those awaiting trial.

Over seven thousand prisoners were transported from New Orleans and surrounding areas to other locations in the wake of the hurricane. Many of these were not convicted of any offense but were held awaiting trial. The charges ranged from serious ones to Municipal offenses, such as trespass or public drunkenness. They were brought to about 35 different locations within the state. The right to speedy trial was lifted. The LACDL has worked with other in-state attorneys to each evacuee in order to identify prisoners whose sentences already expired or who were charged with municipal offenses (very minor offenses). All of these interviews should have been completed by mid-September. An agreement was reached beforehand between defense lawyers and the Attorney General about releasing people who fit specific criteria. There is one parish in which those who fit the above criteria are being released in a

timely manner – that is, Plaquemines Parish. For other parishes, it has all gone much slower than the lawyers anticipated. Some attorneys who have been to Louisiana report that some people have been held pre-trial longer than they could have been held if they had been convicted.

Thus, if your client were to return and be held in Louisiana, he may experience a much longer pre-incarceration period because of the evacuation than one would ordinarily expect, even for minor crimes.

Finding a lawyer to represent your client once he or she returns to Louisiana is another issue. It is not clear whether there will be sufficient number of lawyers to represent the indigent from New Orleans and surrounding parishes after the hurricane. Even before the storm, the Supreme Court of Louisiana found the funding of indigent defense in at least one Parish to be constitutionally inadequate. During the month following Katrina, there have been issues with regard to client visiting inmates of the evacuated parishes. All lawyers must now obtain pre-approval from the DOC before being allowed to visit inmates. Clients considering hiring out-of-state lawyers should be warned that approval to visit inmates has been particularly difficult for out-of-state lawyers after the Hurricane.

**Have records been destroyed so the government will not know whether your clients are in default or not? Will the evidence be there to try your client?**

This is important because so much depends upon records – from court files to criminal records to probation records.

There are reports of the OPP computer system being submerged for a lengthy period with data possibly obliterated. The answers also vary parish to parish but here's a guide. In New Orleans, jail records have been recreated from lists taken from the buses and boats as people left the Parish Prison. The Department of Corrections print-out is purported to be over one thousand pages long. The court records from New Orleans parish are also expected to be available. Evidence rooms were badly damaged; the District Attorneys office for New Orleans has described evidence boxes floating in water where snakes swam. It is unclear how many cases will end up being dismissed as a result. In Jefferson parish, records were not destroyed and the court will open in October 2005. Hence it is difficult to predict whether information important to your client's case will be available or not. Lawyers may want to call LACDL for updates on particular locations.

In sum, clients who need advice about returning to New Orleans voluntarily to face criminal charges should understand that they will probably be held longer and receive more limited representation if they return before the system is repaired. In addition, some of this information may be useful in a creative motion to postpone extradition or permit release on bail if a warrant is sought against your client.

## **Extradition**

**If you are outside Louisiana and have a client who has an outstanding default warrant from before the hurricane in New Orleans, what advice do you have for him or her?**

If a client decides not to turn himself or herself in to Louisiana on an outstanding default warrant, the client risks being charged as a fugitive from justice, a charge that initiates extradition proceedings. The U.S Constitution, art. IV, cl. 2 provides for delivery of persons who have been accused or convicted of a crime in one jurisdiction but who reside in another. See 18 U.S.C.A. § 3182 The fact that your client was evacuated from the demanding state would not be a defense because the fugitive from justice charge does not claim that the person has fled or intentionally failed to appear in the demanding state. It is just a mechanism for bringing someone to a place where charges are pending.

In order to be charged as a fugitive from justice, the demanding state (Louisiana) must forward an arrest warrant, bench warrant or indictment to the asylum state. The asylum state is the state where your client is located. There is a two step process involved. Step one: When your client is arraigned on the fugitive charge, your client may either

demand an extradition hearing or waive formal proceedings. If there is no waiver, a hearing on the contested extradition is scheduled at a future date. Currently, there is overcrowding in Mississippi jails, so judges are scheduling hearings in a shorter time frame than the federal statute permits. Louisiana, the demanding state, must prepare and forward a duly signed and certified papers by the governor of Louisiana – the “warrant of rendition” – for that hearing. Although the hearing is a type of habeas corpus proceeding, there are restrictions about what can be litigated in the asylum courts.

Extradition is a “summary procedure,” in which the asylum state court “may do no more than ascertain whether the requisites of the Extradition Act have been met.” The court must order return to the demanding state upon a finding that the fugitive fits the following criteria:

1. Identity. Client is the person named in the requisition
2. Affidavit or Indictment. Client is substantially charged with a crime in the demanding state.
3. Fugitive from Louisiana. That client was in the demanding state at the time the offense was committed.
4. Governor’s Papers. The paperwork is properly executed.

A finding that Louisiana has met its prima facie case may be founded on the paperwork itself, based on duly executed governor’s papers. The demanding state has no specific burden of proof; it must only present evidence that is “satisfactory” to the court. To overcome the prima facie case created by a properly certified requisition, the fugitive must produce clear and convincing evidence of the defense. The rules of evidence do not apply.

The fact that your client is innocent or may be innocent of the Louisiana crime is not relevant to the extradition proceedings except as it bears on the identity issue named above. Defenses for extradition are only those that disprove the government’s burden. After the hearing, once the judge rules against your client, agents from Louisiana should arrive to transport your client within thirty days under federal law, but Mississippi law holds that judges are not required to dismiss the case if the demanding state does not arrive in time.

By waiving formal proceedings, the client is saying in essence, okay, come get me. Once the client waives, the demanding state must show up to transport your client within thirty days. Otherwise, he should be released. But even if the case is fugitive charge is dismissed because the demanding state does not provide necessary paperwork or send its agent, the process may be repeated. Theoretically, Louisiana could forward another copy of the arrest warrant, bench warrant or indictment to the asylum state unless the client travels to Louisiana on his or her own to address the criminal matter there.

Katrina’s financial impact on Louisiana may effect Louisiana’s management of extradition proceedings. It is possible that Louisiana may not be able to file timely warrants or find the resources to pay for its officials to travel across state lines to take possession of your client. In addition, a state such as Mississippi would require Louisiana to pay for the costs and expenses that are consequent to a fugitive arrest. These are all considerations as clients decide whether to travel to Louisiana to turn themselves in or stay put and risk extradition proceedings.

## FAQ

### **May your client be released pending the governor’s warrant if he refuses to waive rendition?**

Answer: Yes. In Mississippi, a judge may release your client on bail if the client contests the extradition and requests a hearing. However, once the governor issues his certified warrant of rendition, the defendant must be returned to custody.

### **May your client be released if he waives rendition?**

Answer: Generally judges do not release defendants once they waive rendition since the demanding state is told they may come get the defendant and s/he is available to be transported back, but it is not prohibited. However, given the overcrowding situation in Mississippi jails at this time, judges are releasing clients if Louisiana does not arrange

transportation within a short period. According to one Mississippi public defender, judges were releasing his clients forthwith if Mississippi failed to respond to the attorney's faxed waiver of rendition signed by his client.

**What should we tell our client who doesn't yet face extradition about the likelihood of there being an extradition case?**

Answer: It is important to try to learn about the state of criminal records in Louisiana. See the discussion about that above.

**Should we raise with the Mississippi court the situation for prisoners in Louisiana?**

Answer: Yes. It helps explain why your client should not have been expected to return to Louisiana on his own making it more likely that the judge will release your client.

## **Contact Information**

### **LEGAL RESOURCES FOR CRIMINAL DEFENSE ATTORNEYS & FAMILY MEMBERS OF INCARCERATED PERSONS**

The Department of Corrections  
(To find where an inmate from the Parish Prison is being housed)  
225-342-3998 or 225-342-5935 between 7:30 AM and 8 PM.

ACLU National Prison Project  
915 15th St. NW 7th Floor  
Washington DC 20005  
(202) 393-4930

Louisiana Association of Criminal Defense Lawyers (LACDL)  
(To find a private lawyer or to get more information).  
LACDL  
P.O. Box 82531  
Baton Rouge, LA 70884  
Phone (225) 767-7640  
Fax (225) 767-7648  
<http://www.lacdl.org/>

Southern Center For Human Rights  
<http://www.schr.org/>  
83 Poplar Street, N.W., Atlanta, GA 30303-2122  
Telephone (404) 688-1202 Fax (404) 688-9440

American Bar Association Hotline  
Louisiana 1-800 310-7029  
Mississippi 1-866-255-4495

Clerk of Court Address for New Orleans Parish - Temporary  
Kimberly Willikams ?? Butler, Clerk Of Court for New Orleans  
1885 North 3rd Street  
Baton Rouge, LA  
Tel. 225-326 6771

Information about Louisiana may also be culled from the local newspaper The Advocate that has a listing of post-Katrina information <http://www.2theadvocate.com/katrinasitemap.shtml>

## STATE & LOCAL OFFICES

Louisiana Parish Emergency Preparedness Offices: This website contains a link to all of the Preparedness offices and locations. <http://www.loep.state.la.us/linkpages/parishpa.htm>

Parish Homeland Security & Emergency Preparedness: This webpage contains all of the names and contacts numbers. <http://www.loep.state.la.us/parish/parishoepnumbers.htm>

Louisiana Law Enforcement Agencies: This website has a list of all of the law enforcement agencies in Louisiana as well as there contact info. [http://crime.about.com/od/agencies/a/agencies\\_la.htm](http://crime.about.com/od/agencies/a/agencies_la.htm)

Louisiana Attorney General 1 800 351-4889 [www.ag.state.la.us](http://www.ag.state.la.us)

Mississippi Attorney General 601-359-3680 or 1-800 281-4418 [www.ago.state.ms.us](http://www.ago.state.ms.us)

## Transportation Law

Many of the affected airlines, cruise lines, bus lines, and rail line websites, toll free numbers, and specific Hurricane Katrina information are included at the end of this section. Travelers who purchased tickets through a travel agency should contact the travel agency directly.

### Airlines

**Will passengers with airline tickets from an airport closed due to Hurricane Katrina be able to reschedule or get a refund without penalty? What if a passenger is personally unable to travel to an unaffected destination because of the storm?**

This depends on the airline. Most airlines are accommodating rescheduling and refunds without penalties, however this is subject to meeting certain conditions, and may be restricted. As accommodations are not federally regulated, each carrier has its own specific Hurricane Katrina travel policies. Therefore, it is imperative to check with the airline itself.

Also, since airlines are declaring Hurricane Katrina as force majeure (an unexpected event or condition beyond the airline's control such as, but not limited to, meteorological conditions, acts of God, etc.), each carrier's Hurricane Katrina policies are subject to change, and are extremely fluid. Therefore, it is important to check with the airline frequently.

**I bought an airline ticket through Expedia/Travelocity/Orbitz/etc. The flight has been affected by Hurricane Katrina. Will I be able to reschedule or get a refund without penalty?**

As with airlines, each travel search engine has different Hurricane Katrina policies. Most, if not all of them, have waived their change and cancel fees, as long as certain conditions have been met. It is important to check with each travel search engine directly. Travel search engines do not have the authority to waive airline imposed fees, but they will work with the airlines on your behalf.

## Highway use

**Many people will be moving personnel, supplies, or material in support of the relief efforts for the natural disaster. Must permits be obtained for oversize or overweight commercial vehicles used in the relief effort? Are emergency permits available?**

Permits are required for moving oversize or overweight commercial vehicles through the highways of disaster areas. Vehicles must follow states guidelines for transportation even during emergency situations.

In Mississippi, one may apply for an ExpressPass online at <https://www.expresspass.ms.gov/trucking/> or by phone at (888) 737-0061; (601) 359-1717. However, the state has also provided a document allowing the holder to transport overweight commercial vehicles through state routes for hurricane relief. This authorization is currently valid through September 20, 2005 and can be located at [http://ops.fhwa.dot.gov/freight/sw/pdf/ms\\_katrina.pdf](http://ops.fhwa.dot.gov/freight/sw/pdf/ms_katrina.pdf).

Louisiana has a similar policy available at <http://www.dotd.state.la.us/highways/maintenance/permits/home.asp> or by phone at (800) 654-1433. The Governor has also issued an executive order allowing for a permit waiver for the transport of hurricane relief materials. This authorization, which contains certain specifications, may be found at [http://ops.fhwa.dot.gov/freight/sw/pdf/la\\_katrina.pdf](http://ops.fhwa.dot.gov/freight/sw/pdf/la_katrina.pdf) and is valid until rescinded by the Governor.

All information obtained from: [http://ops.fhwa.dot.gov/freight/sw/permit\\_report.htm#obt](http://ops.fhwa.dot.gov/freight/sw/permit_report.htm#obt)

**Will a passenger with bus tickets to or from an affected area be able to reschedule or get a refund without penalty? What if a passenger is personally unable to travel to an unaffected area because of the storm?**

Bus service to or from the affected areas has been severely limited due to Hurricane Katrina. Many bus lines are experiencing schedule delays and cancellations. As with airlines, each has its own Hurricane Katrina policy in place. Therefore, it is important to check with the individual bus line for the most updated service information.

## Maritime Issues

**If a passenger booked tickets on a cruise scheduled to depart or arrive in an affected port, will the passenger be able to reschedule or get a refund without penalty? What if a passenger was personally unable to travel because of the storm?**

As with the airlines, Hurricane Katrina policy depends on the cruise line. Most of them will allow you to cancel and receive a full refund, or rebook. However, as the Port of New Orleans is closed indefinitely, all cruises originally scheduled to depart from there are now operating from other ports indefinitely. Additionally, some cruise lines have chartered their ships to the Military Sealift Command on behalf of the Federal Emergency Management Agency as part of Hurricane Katrina relief efforts. Therefore, departures on those ships have been cancelled. It is wise to contact the individual cruise line directly for specific information as certain restrictions and conditions may apply to any changes.

## Railway Issues

**Will passengers with booked rail tickets to or from an affected area be able to reschedule or get a refund without penalty?**

Due to the infrastructure damage from Hurricane Katrina, passenger rail service has been affected to and from the Gulf Coast and New Orleans. Amtrak is offering full refunds and waiver of all penalties for passengers with reservations traveling to or from New Orleans or other areas served by the affected trains. Certain restrictions and conditions apply, and this may change as the situation changes, so it is wise to contact Amtrak directly for specific information.

**If a passenger is able to rebook, will alternate transportation be provided if the rail service books the passenger to a city different than originally booked to?**

Amtrak has modified its service to and from the Gulf Coast and New Orleans until further notice. Railway points of origin or destinations in the Gulf Coast and New Orleans have been changed to other cities. It appears that alternate transportation to and from some of the new cities will not be provided, so it is wise to contact Amtrak directly for specific information.

## **Environmental Law**

### **Oil Spills**

**I've noticed a leak of oil, chemicals, or other pollutants. Who do I call to report the spill?**

Mississippi requires all spills of any pollutant, not just hazardous materials, that may affect state waters, land, air, or public health, to be reported to the proper authorities. Spills should be reported to the 24-hour State Warning Point at the Mississippi Emergency Management Agency (601) 352-9100 or 1-800-222-6362.

Spills can also be reported to the National Response Center in Washington D.C. at (800) 424-8802 (toll free), (202) 267-2180 (direct), or (202) 267- 4477 (TTD). The NRC is the sole federal contact for reporting spills and is responsible for forwarding the information to the appropriate agency for action. When reporting a spill, provide the NRC with as much information as possible including:

- Your name, location, organization, and telephone number
- Name and address of the party responsible for the incident
- Date and time of the incident
- Location of the incident
- Source and cause of the release or spill
- Types of material(s) released or spilled
- Quantity of materials released or spilled
- Danger or threat posed by the release or spill
- Number and types of injuries (if any)
- Weather conditions at the incident location
- Any other information that may help emergency personnel respond to the incident

### **Fish Kills**

**Where do I report a fish kill?**

The Mississippi Department of Environmental Quality operates a fish kill hotline. To report a fish kill, please call (601) 961-5599.

## **Bankruptcy**

In the wake of Hurricane Katrina, many Mississippians will find themselves jobless, with significantly less property than they had before the storm, and in debt. Fortunately, the bankruptcy process is available to provide relief to those who are unable to pay their debts. This information is intended to answer simple questions about bankruptcy. It is not intended to substitute for consultation with a qualified bankruptcy lawyer.

## **What is bankruptcy?**

Generally speaking, bankruptcy is a process in which you (1) are relieved of most or all of your debts, and (2) arrange for repayment to creditors by reorganizing your finances or liquidating your assets. A debt that has been discharged in a bankruptcy proceeding does not have to be repaid.

When you file bankruptcy, you gain immediate protection from your creditors. This is an important benefit for people who experience sudden financial devastation, as happened to many of the victims of Hurricane Katrina.

The right to file bankruptcy is provided in Title 11 of the U.S. Code. You may have heard people refer to “Chapter 7” or “Chapter 13”; these are chapters of Title 11 and describe different forms of bankruptcy. If you have Internet access, you can view the bankruptcy laws at <http://caselaw.lp.findlaw.com/cascode/uscodes/11/toc.html>.

## **What type of bankruptcy should I file?**

The most common types of personal bankruptcy filed by individuals are Chapter 7 and Chapter 13. Which type you file depends on your specific situation.

### **Chapter 7**

Under Chapter 7 (“straight” bankruptcy or “liquidation”) you file a petition to the court, in which you ask the court to discharge your debts. A trustee collects your property and sells (or “liquidates”) the property that is not exempted by state law (see below), then distributes the proceeds to your creditors. When your debts are discharged, you are no longer legally obligated to repay them.

The advantage to Chapter 7 is the complete discharge of your debt; the disadvantage is the liquidation of your non-exempt property. You may choose to reaffirm some or all of your secured debts, in which case you can keep the property (car, house, furniture, etc.) that secures the debt. Payments must be up-to-date on any debt you choose to reaffirm.

Chapter 7 bankruptcy may be filed only once every six years. There is no minimum debt required.

Chapter 7 is typically utilized by people whose debt is largely unsecured (that is, for which there is no collateral) and who have little non-exempt property. People with valuable, non-exempt property, high income, and/or non-dischargeable debt may prefer Chapter 13.

### **Chapter 13**

Under Chapter 13 (or “debt adjustment” or “reorganization”) your creditors agree to allow you to pay off all or part of your debts over a period of three to five years, out of income you receive during that time. After that time your remaining debt is discharged.

You must have a regular source of income to file Chapter 13, because you will be making payments under your repayment plan.

Chapter 13 is typically utilized by people who have non-exempt property that they wish to keep. Such property may include a home or car in which your equity (the amount you have paid on the loan, if any) is greater than the amount exempted by statute. For example, in Mississippi tangible personal property (which includes motor vehicles, clothes, household goods, and other items) is exempt only up to a value of \$10,000. The homestead exemption is \$75,000. If

the value of your tangible personal property or home exceeds these limits, Chapter 13 may be a better choice than Chapter 7.

## **Others**

Other bankruptcy provisions include Chapters 11 and 12, but they are less commonly utilized than Chapters 7 and 13. Chapter 11 is more useful to businesses and individuals with very large debts, and Chapter 12 applies only to family farmers.

## **If I file bankruptcy, will I have to repay my debts?**

Under Chapter 7, no. Your debts will be discharged, except for any secured debts that you have chosen to reaffirm. Under Chapter 13, you will repay your debt as specified in your repayment plan.

## **What debts cannot be discharged?**

Although the right to declare bankruptcy is created by federal law, under state law there are some debts that cannot be discharged. In Mississippi, the following debts cannot be discharged in Chapter 7 or Chapter 13 bankruptcy:

- Back child support, alimony obligations and other debts dedicated to family support.
- Debts for personal injury or death caused by driving while intoxicated.
- Student loans, unless it would be an undue hardship for you to repay.
- Fines and penalties for violating the law, including traffic tickets and criminal restitution.
- Recent income tax debts (within three years) and all other tax debts.
- Debts you forget to list in your bankruptcy papers, unless the creditor learns of your bankruptcy case.

In addition, under Chapter 7 (but not Chapter 13) the court may declare the following debts non-dischargeable if the creditors challenge your petition:

- Debts you incurred on the basis of fraud.
- Credit purchases of \$1,150 or more for luxury goods or services made within 60 days of filing.
- Loans or cash advances of \$1,150 or more taken within 60 days of filing.
- Debts from willful or malicious injury to another person or another person's property.
- Debts from embezzlement, larceny or breach of trust.
- Debts you owe under a divorce decree or settlement unless after bankruptcy you would still not be able to afford to pay them or the benefit you'd receive by the discharge outweighs any detriment to your ex-spouse (who would have to pay them if you discharge them in bankruptcy).

## **Will I lose my property?**

Under Chapter 7, you will lose property that is not protected by the exemptions, except for property that is security for a debt that you choose to reaffirm. Under Chapter 13, you may keep as much property as you can afford to under your repayment plan.

## **What property is exempt?**

Federal and state law provide for exemptions of some property. Exempt property is protected from your creditors. This means that you may keep this property if you declare bankruptcy.

Property exempted by federal law includes:

- Certain retirement benefits, including civil service employees, military service employees, veteran's benefits, and Social Security.

- Certain death and disability benefits.
- Certain survivor's benefits.
- Miscellaneous exemptions, including military deposits in savings accounts while on permanent duty outside the continental U.S., military group life insurance, seaman's wages pursuant to a written contract, and 75% of earned but unpaid wages.

Property exempted by Mississippi law includes:

- Occupied homestead up to \$75,000. The homestead need not be occupied if the owner is over 60 and married, a widow, or a widower.
- Certain insurance benefits, including disability.
- Certain pension benefits.
- Tangible personal property up to \$10,000.
- Certain public benefits, including assistance to the aged, blind, and disabled; Social Security; unemployment; and worker's compensation.
- Earned but unpaid wages owed for 30 days.

### **Where do I file?**

You must file in Mississippi Bankruptcy Court. There are two court districts, Southern and Northern. You must file in the proper district.

The Southern District courts are located in Biloxi, Gulfport, Hattiesburg, Jackson, Meriden, Natchez, and Vicksburg. You should file in one of these courts if you live in one of the following counties: Adams, Amite, Clarke, Copiah, Covington, Davis, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Holmes, Issaquena, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Madison, Marion, Neshoba, Newton, Noxubee, Pearl River, Perry, Pike, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Walthall, Warren, Wilkinson, or Yazoo.

The Northern District courts are located in Aberdeen, Greenville, and Oxford. You should file in one of these courts if you live in one of the following counties: Alcorn, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, De Soto, Grenada, Humphreys, Itawamba, Lafayette, Lee, Leflore, Lowndes, Marshall, Monroe, Montgomery, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Sunflower, Tallahtchie, Tate, Tippah, Tishomingo, Tunica, Union, Washington, Webster, Winston, or Yalobusha.

### **How do I file?**

You file a petition, along with other forms, at the Mississippi Bankruptcy Court in your region. Before you file, you should try to gather as much of the following information as you can:

- Your current sources of income.
- Your major financial transactions for the last two years.
- Your debts, including documentation of loans.
- A list of your property, both real and personal.
- Your monthly living expenses.
- Your tax returns for the last two years.
- Deeds and titles.

If you are filing under Chapter 13, you must file a repayment plan. The plan describes how your income (minus your monthly living expenses) will be portioned out to your creditors.

### **What does it cost to file?**

It costs \$200 to file under Chapter 7. It costs \$185 to file under Chapter 13. The fee may be paid in installments.

## **Do I need a lawyer?**

You are not required by law to hire a lawyer to file for bankruptcy. However, depending on the complexity of your situation it may be wise for you to consult a knowledgeable attorney. Chapter 13 bankruptcy is generally more complicated than Chapter 7 and is more likely to require legal assistance; for instance, in the preparation of your repayment plan.

## **How can I find a bankruptcy lawyer?**

If you already have a relationship with an attorney, he or she may be able to do the work for you or recommend a bankruptcy attorney.

The Young Lawyers Division of the Mississippi Bar is operating a Hurricane Katrina Disaster Legal Assistance Hotline at 1-866-255-4495, and may be able to offer assistance.

If you have Internet access, the Mississippi Bar website has a directory at <http://www.msbar.org/lawyerdirectory.php>. Unfortunately, the directory is not categorized by practice area.

You can consult your local Yellow Pages for bankruptcy attorneys in your area.

## **When should I file for bankruptcy?**

Because of changes in federal bankruptcy law that take effect on October 17, 2005, it may be to your advantage to file before that date. The new law is not friendly to debtors.

## **What effects will the new bankruptcy law have?**

The new law (commonly referred to in the media as “the bankruptcy bill”) will restrict the availability of discharge under Chapter 7 and reduce the amount of relief available under Chapter 13. Among the specific changes:

- People whose household incomes are above the median income for a household of their size may be forced to file Chapter 13 instead of Chapter 7.
- The length of the automatic stay (during which time you are protected from your creditors) will probably decrease.
- Debtors will be required to obtain approved credit counseling before filing. There is currently no such requirement.
- Filing fees will increase. Because of the new law’s complexity, it is anticipated that attorney fees will increase as well.
- Car loan debt will be non-dischargeable if the car was purchased in the past two years and is now worth markedly less than the loan balance.
- Certain debts arising from divorce will be non-dischargeable under Chapter 7.
- Some kinds of student loans will become non-dischargeable.
- The required period of time that must pass between Chapter 7 filings increases from six years to eight years.

# **Tax Law**

## **Did Katrina affect the time I have to file my tax returns or pay taxes I owe?**

Taxpayers affected by Katrina have until February 28, 2006 to file any tax returns (income, estate, gift, excise or

employment) and to pay any taxes with an original or extended due date on or after August 29, 2005. If you are in an “individual assistance area, this relief will be automatic; if you are in an area where damage is more isolated, you will need to identify yourself as a hurricane victim by writing “Hurricane Katrina” in red ink at the top of any tax forms or documents. In Mississippi, residents of the following counties are eligible for automatic relief: Adams, Amite, Attala, Claiborne, Choctaw, Clarke, Copiah, Covington, Franklin, Forrest, George, Greene, Hancock, Harrison, Hinds, Jackson, Jasper, JeffersonDavis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Lowndes, Madison, Marion, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pike, Rankin, Scott, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, Winston, Yazoo. You will not be liable for any interest, late payment, late filing or failure to deposit penalties that would otherwise apply. This relief applies to returns, extended returns, estimated tax payments and Employment and excise tax deposits.

## **Must I include assistance payments in my reported income?**

You are not required to report as income any qualified disaster relief payments from government agencies, from charitable organizations or from your employer for living, medical, transportation, food or other related expenses.

## **Can I deduct my losses from Katrina on my tax return?**

You may deduct casualty losses on your income tax return. A casualty loss is one resulting in damage, destruction, or theft of property held for personal use, business, or investment purposes. While normally, to be deductible, a casualty loss must be at least \$100 if personal property and exceed 10% of your adjusted gross income, these limits will not apply to Katrina losses. You determine the amount you may deduct by determining the decrease in the fair market value of your property because of Katrina; you may not deduct amounts reimbursed by insurance.

## **Did Katrina affect my Earned Income Credit or Child Credit?**

Those with a principal place of residence in a Katrina disaster area may calculate both credits using their 2004 earned income.

## **Appendix**

The Appendix includes information related to insurance claims. The Appendix will be expanded in the next week to include information on document replacement

### Appendix A - Useful Telephone Numbers and Websites

#### State Departments of Insurance

Alabama Department of Insurance 1-800-433-3966 [www.aldoi.org](http://www.aldoi.org)

334-241-4141

Louisiana Department of Insurance 1-800-259-5300 [www.ldi.state.la.us](http://www.ldi.state.la.us)

225-342-5900

Mississippi Department of Insurance [www.doi.state.ms.us](http://www.doi.state.ms.us)

In-State 1-800-562-2957

Out-of-State 1-866-856-1982

Local 601-359-2453 or 601-359-3569

Call Center Hours 7:00 a.m. - 7:00 p.m.

Useful Websites

National Association of Insurance Commissioners

[www.naic.org](http://www.naic.org)

Hurricane Insurance Information Center

[www.disasterinformation.org](http://www.disasterinformation.org)

Insurance Information Institute

[www.iii.org](http://www.iii.org)

## Appendix B - Contact Information for Insurers

. ACE USA Clients receive individual 800 numbers or call 800 433-0385 (ACE USA/INAMAR

Marine claims); 800 234-7354 (Disaster Mortgage Protection claims)

. Acuity 800-242-7666

. Alfa Insurance Group 888-964-2532

. Alabama Municipal Insurance Corporation 866-239-AMIC (866-2239-2642)

. Allmerica 800-628-0250

. Allstate 800-54-STORM (800-547-8676)

. Allstate Floridian Insurance Company 800-54-STORM (800-547-8676)

. American Bankers Insurance Company 800-245-1505

. American Federation Insurance Company 800-527-3907

. American General Property Insurance Company of Florida 800-321-2452

. American International Group 800-433-8880 (auto & home)

. American National Property & Casualty Company & Affiliates 800-333-2861

. American Reliable Insurance Company 800-245-1505

. American Skyline Insurance Company 888-298-5224

. American States Insurance Company 888-557-5010

- . American Strategic Insurance 866-ASI-LOSS (274-5677)
- . American Superior Insurance 954-577-2202
- . Arch Insurance 800-817-3252
- . Argus Fire & Casualty Company 954-331-4722
- . Armed Forces Insurance Exchange 800-828-7736
- . Atlantic Mutual Insurance Company 800-945-7461
- . Atlantic Preferred Insurance Company 800-673-4952
- . Auto Owners Insurance Group (Palm City) 800-783-1269
- . Auto Owners Insurance Group (Ft. Meyers) 800-437-2256
- . AXA Re Property and Casualty 800-216-3711
- . Balboa Insurance Group - 1-888-768-2096
- . Bankers Insurance Company 800-765-9700
- . Bankers Security Insurance Company 800-765-9700
- . Bituminous 800-822-2905 (Florida); 800-605-0311 (Mississippi & Louisiana);  
800-678-3104 (National)
- . Bristol West Insurance Group 800-BRISTOL
- . Capital Preferred 800-734-4749 or 888-388-2742
- . Catawba Insurance 800-711-9386
- . Century Surety Insurance Company 800-850-0422
- . CHUBB Insurance Group 800-252-4670 (800-CLAIMS-0)
- . Church Mutual Insurance 800-554-2642
- . Citizens Property Insurance Corp. 866-411-2742 (866-411-CPIC)
- . Cincinnati Insurance Company (call your local agent first and then 1-877-242-2544)
- . Clarendon National Insurance Company 800-216-3711
- . Clarendon Select Insurance Company 800-509-1592
- . CNA 877-733-4250, 877-262-2727
- . Colony Insurance Company 800-577-6614 ext. 1715
- . Companion Property & Casualty 800-649-2948
- . Cotton States Mutual Group 800-282-6536

- . CUNA Mutual 800-637-2676
- . Cypress 888-352-9773
- . EMC Insurance Companies 800-910-4988
- . Encompass Insurance Company 800-588-7400
- . Erie Insurance Group 800-367-3743
- . Farmers 800-435-7764
- . FCCI (first report of injury) 800-226-3224
- . Federated National Insurance Company 800-420-7075
- . Fidelity & Casualty Insurance Company 800-725-9472
- . Fidelity National Insurance Company 800-220-1351
- . Fidelity National Property and Casualty Insurance Company 800-725-9472
- . Fireman's Fund 888-347-3428 (888-FIREHAT)
- . First Floridian 800-252-4633 (800-CLAIM33)(personal); 800-432-3072 (business)
- . First Premium Insurance Group (Lloyd's Mobile Home) 800-432-3072
- . First Protective Insurance Company 877-744-5224
- . First Trenton 800-468-7341
- . Florida Family Insurance Company 888-486-4663 or 888-850-4663
- . Florida Farm Bureau Insurance Companies 800-330-3327
- . Florida Select 888-700-0101
- . Florida Preferred Property Insurance Company 800-673-4952
- . FM Global 877-639-5677 (877-NEWLOSS)
- . Foremost Insurance Company 800-527-3907
- . GE Employers Re 866-413-8978
- . GEICO 800-841-3000
- . General Star Indemnity Company 800-624-5237
- . General Star National Insurance Company 800-624-5237
- . Georgia Casualty & Surety 800-279-8279 (claim reporting); 866-458-7506 (claim dept.)
- . Georgia Farm Bureau 866-842-32276
- . GMAC Insurance (Auto Claims) 800-468-3466
- . Granada Insurance Company 800-392-9966

- . Great American 900-221-7274
- . Guide One 888-748-4326
- . Hanover Insurance (Allmerica) 800-628-0250
- . Harbor Insurance Company - 800 216-3711
- . The Hartford - 800-243-5860
- . Hartford Insurance Company of the Midwest 800-637-5410 or 800-243-5860
- . Hartford Steam 800-HSB-LOSS
- . Holyoke Mutual- 800-225-2533
- . ICAT 866-789-4228
- . Industrial Risk Insurers - 860-520-7347 (Business claims)
- . Interstate Fire & Casualty 800-456-8458, Ext. 770
- . Liberty Mutual- 800-2CLAIMS (800-225-2467)
- . Liberty Mutual Fire Insurance Company 800-637-0757 (in state); 800-633-1833 (24 hour)
- . Louisiana Citizens Property Insurance Corporation 800-274-9830
- . Louisiana Farm Bureau 866-275-7322
- . Main Street America Group 877-282-3844
- . Mercury Insurance Group 800-987-6000
- . Merrit Plan Insurance Group - 1-888-768-2096
- . MetLife Auto & Home 800-854-6011
- . Mississippi Farm Bureau 866-275-7322
- . Mississippi Rural Risk Underwriting Association - (601)-981-2915
- . Mississippi Windstorm Underwriters Association - 601-981-2915
- . National Flood Insurance Program (NFIP) - 1-800-427-4661
- . National Insurance Company 800-239-2121
- . Nationwide 800-421-3535
- . North Pointe Insurance Company 877-878-1991
- . Ohio Casualty and West American Insurance Company 888-701-8727
- . Old Dominion Insurance Company 877-425-2467 or 800-606-7992
- . Omaha Property & Casualty 800-638-2592 (Flood only)

- . Omega Insurance Company 800 216-3711
- . OneBeacon 877-248-3455
- . Poe Financial Group 800-673-4952
- . Progressive Auto Insurance 800-PROGRESSIVE (766-4737)
- . QualSure Insurance Corp. 877-563-0150
- . Regency (Tower Hill) 800-216-3711
- . Republic Fire & Casualty (Homeowners, Dwelling Fire, Auto & Commercial) 800-451-0286
- . Republic Group (Republic Fire & Casualty, Republic Underwriters Southern Ins Co, Southern

Underwriters Ins.) 800-451-0286

- . Republic Underwriters (Commercial) 800-451-0286
- . RLI Insurance Company 800-444-0406
- . Royal & Sun Alliance 800-847-6925
- . SAFECO 800-332-3226
- . Scottsdale Insurance Company 800-423-7675
- . Security National Insurance Company 800-Bristol
- . Selective 866-455-9969
- . Service Insurance Company 800-780-8423
- . Shelter Insurance Group 800-SHELTER (800-743-5837)
- . Sompo Japan 800-444-6870
- . Southern Family Insurance Company 800-673-4952
- . Southern Farm Bureau 1-866-271-7322
- . Southern Fidelity 866-874-7342
- . Southern Insurance Company (Commercial) 800-451-0286
- . Southern Underwriters (Commercial) 800-451-0286
- . Southwest Business Corp. (Lloyd's Excess Flood) 800-527-0066 Ex. 7389
- . St. Johns Insurance Company 800-748-2030
- . St. Paul Insurance Companies 800-CLAIM 33 (800-252-4633) -Auto and Home Claims; 800

STPAUL (800-787-2851) - Business Claims

. St. Paul Travelers 800-CLAIM33 (800-252-4633) - Auto and Home Claims; 800-787-2851

Business Claims; 800-356-6663 -Flood Claims

. State Farm Insurance 800-SF-CLAIM (800-732-5246)

. Sunshine State Insurance Company 877-329-8795

. TAPCO 888-437-0373

. Texas Farm Bureau 800-772-6535

. Tower Hill Insurance Companies 800-216-3711 or 800-509-1592

. Travelers 800-252-4633 (800-CLAIM 33) - Personal Claims; 800-238-6225 - Business Claims;

800-356-6663 (Flood claims)

. Travelers Boat & Yacht 800-772-4482

. Travelers WC (first report of injury) 800-238-6225

. United Fire Insurance Company 800-343-9131

. United Property and Casualty Company 800-861-4370

. Universal Insurance Company 888-846-7647

. USAA 800-531-8222

. USF&G 800-787-2851; 800-631-6478 (homeowners claim); 407-660-9000 (customer service)

. USLI 800-523-5545

. Vanguard Fire & Casualty Company 888-343-5585

. W.R. Berkley Corp. 203-629-2000

. XL Insurance 214-559-1574, 800-688-1840

. Zenith (first report of injury) 800-440-5020

. Zurich Insurance Company 800-987-3373

[See National Association of Insurance Commissioners, Emergency Information for Hurricane Katrina Victims (Sept. 2, 2005 Press Release) at Mississippi Insurance Department, States Offer Insurance Assistance for Hurricane Evacuees (Sept. 2, 2005 Press Release) at <http://www.doi.state.ms.us/pressrel/pressrel9205.pdf>]. Appendix C - Filing a Complaint with the Mississippi Insurance Department

How do you file a complaint?

Requests for help with insurance matters directed to the Mississippi Insurance Department Consumer Services Division are most commonly made by calling toll-free from within Mississippi at 800-562-2957, or 601-359-2453 in the Jackson area. You can mail your request for assistance to Mississippi Insurance Department, Consumer Services Division, P.O. Box 79, Jackson, MS 39205. Or you may visit MID's offices located on the tenth floor of the Woolfolk State Office Building, 501 North West Street, Jackson, Miss. Visitor parking is located on the street and in

the connecting parking garage. General inquiries, complaints against insurance companies or agents, and other matters also may be sent via e-mail at [consumer@mid.state.ms.us](mailto:consumer@mid.state.ms.us) . Be sure to include your mailing address and telephone number with any correspondence directed to MID. Complaints filed by e-mail may be returned with instructions for you to resubmit the claim in writing with your signature in order for MID to be able to take specific corrective action that may be required.

What should you include in your complaint?

You must include the following information in order for the Mississippi Insurance Department to be able to properly process your complaint:

- your name and your relationship to the insured.
- telephone number where you can be reached during the day.
- name of insured.
- insured's address name, address, city, zip code, and phone number.
- the name of the insurance company with which the insured is having a problem.
- address of the insurance company with which the insured is having a problem.
- type of insurance, policy number, claim number, and date of loss.

What are the alternative ways of filing a complaint?

There are two alternative ways of filing a complaint:

1. Visit the National Association of Insurance Commissioners' (NAIC) Consumer Information Source ([www.naic.org/cis/](http://www.naic.org/cis/)) site and click on "File a Consumer Complaint" to file your complaint via email with the Mississippi Department of Insurance.
2. Download MID's Complaint Reporting Form ([www.doi.state.ms/US/consumer/midcmfm.pdf](http://www.doi.state.ms/US/consumer/midcmfm.pdf)) (Adobe Acrobat Reader required), complete, then print and mail to MID at P.O. Box 79, Jackson, MS 39205. Once they receive your correspondence, it will be assigned to one of MID's investigators, who will review it and take the necessary steps to resolve the matter. Allow MID 20 working days to contact the company or agency that is the subject of your complaint. They will notify you in writing of their findings.

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- This page was last modified 14:57, 21 June 2006.