

Storm-related legal services relief

November 9, 2012



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Storm Response Pro Bono Training

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Training Goals

- Describe the work of NYLAG and its Storm Response Unit
 - Scope of services provided and clients served
 - Volunteer opportunities
- Overview of major disaster relief programs, such as
 - FEMA for Individuals and Households
 - FEMA for Organizations
 - Small Business Administration Loans
 - Emergency Unemployment Assistance
- Post-Sandy Housing Issues
 - Landlord-Tenant issues
 - Insurance claims
 - Mortgage issues
- Accessing and continuing public benefits
- Other legal issues being faced by storm victims

New York Legal Assistance Group

- Founded in 1990, the New York Legal Assistance Group provides high quality, free civil legal services to low-income New Yorkers who cannot afford attorneys. Our comprehensive range of services includes direct representation, case consultation, advocacy, community education, training, financial counseling, and impact litigation.
- NYLAG served more than 57,000 individuals in 2011
- NYLAG Units
 - General Legal Service
 - Matrimonial and Family Law
 - Immigrant Protection
 - Holocaust Compensation
 - LGBT Law Project
 - LegalHealth
 - Special Education
 - Special Litigation
 - Total Life Choices

NYLAG's Mobile Legal Help Center

- NYLAG's MLHC is the country's first-ever legal services office and courtroom on wheels
 - Attorneys provide counseling, advice and direct representation without leaving the vehicle
 - A video link with the courts enables access to judges for emergency hearings
- The MLHC was created through a partnership between NYLAG and the New York State Courts Access to Justice Program, with initial funding from the David Berg Foundation
- Immediately post-Sandy, the MLHC began traveling to hard-hit neighborhoods across the city
- Webpage: www.NYLAG.org/units/mobile-legal-help-center
- Email: mobile@nylag.org

NYLAG's Storm Response Unit

- NYLAG has mobilized a legal aid disaster relief program to help victims of the storm deal with a range of issues
- Operating with paid staff, assistance from NYLAG's more than 100 professionals, and a network of over 800 volunteers
 - Intake hotline: 212-584-3365
 - Email: stormhelp@nylag.org
 - Webpage: www.NYLAG.org/stormhelp
- NYLAG needs volunteers to answer hotline calls and mobilize to sites across New York City, Nassau, Suffolk and Westchester. Check NYLAG's Storm Response Unit webpage for information and opportunities to assist.

Federal Disaster Relief

- To be eligible for federal disaster relief benefits, people must have suffered specific types of losses in an area that has been declared a disaster by the President.
- On October 30th, President Obama signed an emergency disaster declaration. In New York, the following counties are currently eligible for federal disaster assistance:
 - Bronx, Kings (Brooklyn), Nassau, New York, Richmond (Staten Island), Suffolk and Queens
 - Westchester and Rockland County residents are not eligible for FEMA Individual Assistance programs, but those counties are eligible for FEMA Public Assistance programs (NOT the same as NYC HRA public assistance)

www.DisasterAssistance.gov

1-800-621-3362

Federal Disaster Relief, cont'd

- Federal disaster relief programs are intended to be utilized as a “last resort” after an applicant has applied for any insurance or other reimbursement to which they are entitled.
- FEMA: The Federal Emergency Management Agency, a federal agency within the Department of Homeland Security
 - Administers a variety of disaster recovery programs including:
 - Housing Needs Assistance
 - Other Than Housing Assistance
- SBA: The Small Business Administration
 - SBA’s disaster assistance programs include:
 - Home and Property Disaster Loans
 - Business Disaster Loans

FEMA Disaster Relief, cont'd

- Apply online, by phone or at a FEMA Disaster recovery Site

www.DisasterAssistance.gov

1-800-621-3362

- After the application is completed the applicant will receive a FEMA application number. The applicant must retain this number for future reference
- FEMA commits to contact by an inspector or caseworker within 3 – 10 days after an application is filed

FEMA Disaster Relief, cont'd

- FEMA awards are based on households
 - Everyone living together is presumptively part of the household, but people can demonstrate that they live separately, for example, by showing they pay their own utilities and food
- Maximum FEMA award for a household in NY is \$31,900
- FEMA does not provide cash assistance to corporations and organizations, but SBA loans are available

Tips and Information Before Applying

- The applicant or a member of the household must have appropriate immigration status and a valid Social Security Number
 - Appropriate immigration status means: a U.S Citizen, a Qualified Alien or a non-citizen national (extremely rare)
 - Qualified Aliens include green card holders/lawful permanent residents, refugees and asylees, battered spouses and children with VAWA self-petitions filed or pending
 - Clients must be thoroughly screened about the immigration status of each household member
- FEMA recommends that before applying, applicants gather:
 - Social Security number
 - Current and pre-disaster addresses
 - A reliable telephone number
 - Insurance information
 - Total household annual income
 - A routing and account number from the bank for direct deposit
 - A description of losses that were caused by the disaster

FEMA Housing Needs Program

- Housing Needs Program: Can provide grants to individuals and households where property has been damaged or destroyed and where losses are not covered by insurance.
- Housing Needs Assistance may include:
 - Temporary housing
 - Repair and replacement of damaged property
- Generally, FEMA only reimburses for items that allow people to stay in their home safely. For example, removal of a downed tree in a yard is not reimbursable
- FEMA operates a housing portal on its website that lists area rentals available

Housing Needs, cont'd

- Temporary Housing
 - Rental payments for temporary housing (a place to live for a limited period of time)
 - Emergency rental assistance is available without a prior inspection for the first two months and may be extended if requested after the initial period based on a review of individual applicant requirements and an inspection
 - Available for renters and owners
 - Reimbursement rate varies by location and size of apartment. For example, in NYC:
 - \$1,234/mo for a 1 bedroom
 - \$1,474/mo for a 2 bedroom
 - Maximum period of rental assistance is 20 months total

Housing Needs, cont'd

- Hotel stays:
 - First look on the FEMA housing portal for FEMA-approved hotels
 - FEMA will give a code and there is no charge
 - If none is available, FEMA will reimburse for hotel stays
 - Hotel reimbursement is one a case by case basis
 - Hotel stays are only permitted through November 14th unless the applicant receives an extension
 - Maximum stay can be 30 days
- Moving and storage expenses related to the disaster are covered if needed to avoid additional disaster damage while disaster-related repairs are being made to the home

Housing Needs, cont'd

- Repairs and Property Replacement
 - Repair and replacement of essential household items not covered by insurance to make damaged dwellings safe, sanitary and functional
- FEMA inspection is necessary for a property loss claim
 - Generally takes place within 10 – 15 days
 - Approximately 10 days after the inspection, a decision will be made and an electronic payment should be deposited within 3 days
 - For repairs, FEMA reimburses for the cost of repair
 - For replacements, FEMA will pay a lump sum to the household based on prices that vary by county

FEMA Other Than Housing Needs

- Other Than Housing Needs Assistance
 - Can provide grants for certain other expenses caused by the disaster, including:
 - Medical and dental expenses
 - Funeral and burial expenses
 - Clothing; household items (room furnishings, appliances); tools (specialized or protective clothing and equipment) required for your job; necessary educational materials (computers, school books, supplies)
 - Fuel for primary heat source (heating oil, gas)
 - Clean-up items (wet/dry vacuum, dehumidifier)
 - Damage to a vehicle
- All expenses must be related to the disaster

Other FEMA Programs

- Other FEMA relief programs include
 - crisis counseling,
 - income tax assistance for filing casualty losses

www.disasterassistance.gov

1-800-621-3362

FEMA Appeals

- FEMA generally sends a decision letter within 30 days from the date of an application
 - Applicants have 60 days from the letter to file an appeal
 - 2 levels of FEMA administrative appeals, followed by federal district court action
 - Administrative appeals are made by letter first to the Regional director and then to the Assistant Director at headquarters
- Appeals can be based on denials of claims or inadequacy of awards
- Important to provide documentation and support at each appeals stage
- FEMA will consider 3 administrative appeals, then close the case

Small Business Administration (SBA)

- SBA provides low-interest loans to homeowners, renters and businesses to make permanent repairs to their personal property, real property and businesses
- SBA loans are to be used for **replacement** and/or **repair of**:
 - real estate
 - personal property
 - machinery and equipment
 - inventory and business assets

To apply for SBA Loans

- By Phone: 1-800-659-2955
- Online: <https://disasterloan.sba.gov/ela>

SBA Loans, cont'd

- Interest Rates:
 - For applicants unable to obtain credit elsewhere:
 - Interest rates will not exceed 4 percent
 - For applicants who can obtain credit elsewhere
 - Interest rates will not exceed 8 percent
- General terms:
 - SBA determines whether an applicant has credit elsewhere
 - Repayment periods are long-term, in many cases up to 30 years
 - Terms are determined on a case-by-case basis, based upon each borrower's ability to pay
 - Insurance proceeds on property or home will be deducted from total loan amount
 - Loans may not be used to upgrade homes unless required by local building authority/code
 - Loans may be increased up to 20 percent of the total amount of disaster damage to real estate to make improvements that lessen the risk of property damage by future disasters of the same kind

SBA Loans, cont'd

- Personal Property Loans
 - Available to renters or homeowners
 - Maximum Amount is \$40,000
 - Loans are to be used for permanent repair of furniture, cars, appliances, and other items damaged or destroyed in the disaster or replacement of clothing
- SBA Homeowner Loans
 - Available to homeowners for damage to a Primary Residence
 - Secondary/Vacation homes are NOT eligible
 - Maximum Amount of assistance is \$200,000
 - Loans are to be used for permanent repairs (including replacement) of home to its pre-disaster condition

SBA Loans, cont'd

- SBA Business Physical Disaster Loans
 - Available to non-farm business and some private, nonprofit organizations
 - Maximum loan amount is \$2 million
 - Loans are to be used for replacement/restoration of damaged property to the condition it was in before the disaster. Covered property includes real property, machinery/equipment, fixtures, inventory and leasehold Improvements

HUD – Housing and Urban Development

- Two HUD programs may be of particular interest to disaster victims:
 - HUD's Section 203(K) Rehab Mortgage Program
 - enables homebuyers and homeowners to finance both the purchase (or refinancing) of a house and the cost of its rehabilitation through a single mortgage or to finance the rehabilitation of their existing home.
 - Can be used to finance the rehabilitation of storm-damaged homes.
 - HUD Mortgage Insurance for Disaster Victims
 - For disaster victims who have lost their homes and are seeking assistance in the purchase or reconstruction of a home.
 - Can potentially provide a buyer up to 100 percent financing
 - Applications for HUD loans are submitted through a HUD-approved bank. See www.hud.gov

Disaster Unemployment Assistance

- Disaster Unemployment Assistance (DUA) is authorized by the federal government and administered by state agencies
 - In New York, the Department of Labor
- DUA is **NOT** available for people already receiving regular unemployment benefits
- Additional people are eligible for DUA than regular unemployment benefits, including
 - Self-employed
 - Those who would have started working but for Sandy
- Applicants must be unemployed for a reason **directly related to the storm**
 - Examples: injured during the storm, workplace was damaged/destroyed, transportation to workplace impossible because of storm damage.

DUA

- DUA is available for a maximum of 27 weeks (October 31, 2012 – May 5, 2013)
 - Unlike regular unemployment, DUA is retroactive to the date of unemployment, not the date of application
- Deadline to apply is **December 3, 2012**
- To apply:
 - Call 1-888-209-8124 (from within NY) or 1-877-358-5306 (from outside NY)
 - Got to: <http://www.labor.ny.gov/unemploymentassistance>

Housing Issues: Housing Court Actions

- If clients were in Housing Court before Sandy:
 - Check Civil Court of New York website for updates on i.e, court closures, defaults, etc.
 - <http://www.courts.state.ny.us/courts/nyc/civil/index.shtml>
 - If a client received a Notice of Eviction, advise client to call Marshall to see if scheduling evictions.
- Governor Cuomo's Executive Order 52: Temporarily suspends, effective October 26, 2012 until further notice, most statutory provisions establishing time limits on actions and time in which to take appeals.

Assessing Housing Issue

- Establish type of apartment:
 - Rent Controlled: legally regulated apartments in buildings built before 1947, occupied before 1971.
 - Rent Stabilized: legally regulated apartments in buildings with at least 6 units: (a) built before 1947, but occupied after 1971; (b) built between 1947 and 1974; or (c) buildings that receive J-51 & 421-a tax benefits.
 - Private Dwelling: 1 or 2 family home or multiple dwelling if 3+ families in occupancy.
 - Two Family Home: no more than 2 families in occupancy.
 - NYCHA: public housing developments.
- Establish type of lease:
 - Rent stabilized lease
 - Private lease
 - No lease or month-to-month
- Advise clients that no matter the circumstances, if in premises more than 30 days, Landlord cannot lock out w/o court order or government vacate order. The tenant is entitled to Notice of Termination and only Marshall/Sheriff can perform lock out.

Displaced Tenants

- Pursuant to Mayoral Executive Order No. 165, residents of **Zone A** cannot re-occupy until NYC Department of Buildings (DOB) inspects and designates a **green** placard.
 - Landlord can expedite by submitting to DOB certified report by licensed engineer/registered architect, attesting to:
 - (i) no standing water;
 - (ii) building structurally sound;
 - (iii) all life safety systems intact (i.e., smoke detector);
 - (iv) at least one working elevator;
 - (v) otherwise safe to occupy &
 - (vi) building has electricity or generator powering life systems.
- Boundaries of Zone A can be found in the Hurricane Evacuation Zone Finder on the website of the NYC Office of Emergency Management (OEM) and is searchable by zip code

<http://gis.nyc.gov/oem/he/index.htm>

DOB Tagged Buildings

- New York City is mobilizing “Special Inspection Agencies” as of November 13, 2012 to evaluate buildings.
 - Red - Unsafe. Re-entry prohibited. But not an order to demolish.
 - Yellow - Restricted entry as specified on placard.
 - Green - Safe. Re-entry permitted.
- If no placard, building not inspected or no hazard found. Look for green placard somewhere prominent on block.

Landlord-Tenant Issues: Termination of Lease by Tenant

- NY Real Property Law (RPL) Sec. 227
 - Tenant May Surrender Premises - “Where any building, which is leased or occupied, is destroyed or so injured by the elements, ... as to be untenable and unfit for occupancy, and no express agreement to the contrary has been made in writing, the lessee or occupant may, if the destruction or injury occurred w/o his/her fault or neglect, quit & surrender possession of the premises ... and he or she is not liable to pay the lessor or owner rent for the time subsequent to the surrender. Any rent paid in advance or which may have been accrued by the terms of a lease or any other hiring shall be adjusted to the date of such surrender.”

Termination by Tenant, cont'd

- Residential Lease: Cannot waive this provision in the lease. Against public policy. See generally Schwartz, Karlan & Gutstein v. 271 Venture, 172 A.D.2d 226 [1 Dep't 1991].
 - Tenant must abandon/surrender premises without unreasonable delay or waives constructive eviction claim.
 - Case by case analysis, but practically, 5.5 months or “several months” may be too long to claim constructive eviction claim.

Termination by Tenant, cont'd

- Commercial Lease - MUST CHECK LEASE
 - In commercial cases, lease may include provision waiving right to surrender pursuant to RPL Sec. 227; not against public policy in commercial cases
 - Limited to remedies set forth in lease
 - Check lease for provisions regarding service notice from landlord.
- Partial Constructive Eviction:
 - Abates tenant's obligation to pay full rent because landlord cannot apportion his own wrong. (Minjak Co. v. Randolph, 140 A.D.2d 245 [1 Dep't. 1988]).

Termination of Lease by Landlord

- Private Apartment – A lease provision stating that the landlord can terminate if the landlord deems damage so severe as to make the apartment unfit for occupancy, may not be against public policy.
- Rent Stabilized/Controlled Apartment - Landlord cannot terminate lease unless seeks in good faith to demolish the building or is ordered to demolish the building, subject to DHCR approval or government vacate order.
 - If intends on rebuilding, tenant likely entitled to relocation services, moving expenses and other benefits under RS/C laws.
- NYCHA - A tenant who agrees to relocate to another apartment to allow necessary repairs is not voluntarily surrendering.

Rent Abatements

- If tenant wants to stay, may request a rent abatement pursuant to Multiple Dwelling Law Sec. 302-a, which includes any violation that constitutes a fire hazard or serious threat to life, health or safety of occupants.
- If a rent stabilized tenant, the tenant should apply to NYS HCR (formerly DHCR) for rent reduction based upon decreased services to retain right to return to apartment upon repair.
 - Online Application for Emergency Conditions available at:
<https://www1.dhcr.state.ny.us/ServicesIntake/buildingselect.aspx>
- NYCHA tenants are entitled to repair and deduct, but may be subject to Chronic Rent Delinquency administrative case.
 - Organizations are looking into mobilizing groups of NYCHA tenants

Relocation

- FEPS to Move: eligible if an open Public Assistance (PA) cash case, minor child in home, rent within FEPS guidelines and displaced by Sandy.
 - Proof of displacement by Sandy - government vacate order (i.e., DOB vacate order) or other government documentation evidencing that applicant will be displaced for significant period of time due to Sandy.
 - Case by case evaluation, but must be displaced for at least 1 to 2 weeks.

Relocation, cont'd

- Current FEPS recipients
 - FEPS Application Facilitating Organizations:
 - Bronx - BronxWorks (630 Jackson Avenue, Bronx, NY 10455/(718) 637-2630)
 - Staten Island - Catholic Charities (12 W. 14th St., 4th Ave., New York, NY 10003/(212) 337-0213).
 - Brooklyn - Camba (45 Hoys St., Brooklyn, NY 11201/(718) 237-6329)
 - Queens - Queens Community House (165-08 88th Ave., Rm 217, Jamaica, NY 11432/(718) 883/7701).
- Shelters:
 - NYC Gov: overnight shelters (http://www.nyc.gov/html/misc/html/2012/hurricane_shelters.html).
 - FEMA/Red Cross

Other Housing Issues: Security Deposits

- Upon vacature, a tenant is entitled to receive her security deposit back. Landlord can require that deposit be paid in order to protect the owner's interest in the premises. The deposit should be kept in an interest bearing account. The tenant is entitled to the interest but the landlord can keep 1% of the interest on the deposit.
- After vacating, a tenant should make the request for the return of the deposit in writing. The landlord then has 30 days in which to return the deposit to the tenant. If the landlord does not return the deposit, a tenant can sue for the money in Small Claims Court (proof may be an issue) or contact the Attorney General's mediation program (<http://www.ag.ny.gov/consumer-frauds/housing-issues>).
- A landlord may keep the deposit or part of the deposit under some circumstances, where there is damage to the subject premises caused the by tenant.
- See NY General Obligations Law, Secs. 7-101, et. seq. See also provisions of the RPL and RS/C

New and Continuing Public Benefits

- Benefits generally for people with low income and assets
 - Administered by Departments of Social Services
 - In NYC – the Human Resources Administration or HRA
- **SNAP (Supplemental Nutrition Assistance Program)**, formerly known as Food Stamps
- **Cash Assistance:** can include shelter payments made directly to a landlord as well as cash benefits deposited on a client's EBT card
- **Medicaid:** public health insurance

SNAP

- Automatic replacement of SNAP benefits
 - SNAP recipients in many impacted areas will receive a one-time 50% deposit of SNAP funds to compensate for food lost as a result of Sandy.
 - The deposits should be starting this week.
 - Eligible recipients are identified by affected zip code. Currently approximately 80 zip codes are included. Updated information can be found at: <http://otda.ny.gov/news/SNAP>
- SNAP recipients living in areas other than the specified zip codes may apply for replacement benefits:
 - Report loss of food purchased with SNAP benefits to HRA by **Wednesday, November 28, 2012**, preferably **in writing**
 - Submit a Request for Replacement of Food Purchased With SNAP Benefits form to HRA no later than Monday, December 10, 2012.
 - In NYC: <http://otda.ny.gov/programs/applications/2291a.pdf>
 - Outside NYC: <http://otda.ny.gov/programs/applications/2291.pdf>

SNAP, cont'd

- Post-Sandy, SNAP may be used to purchase prepared foods:
 - Normally, SNAP benefits may not be used to purchase hot or cold prepared foods. However, USDA has issued a waiver allowing people to purchase such foods using SNAP
 - Waiver will last until November 30, 2012
 - If clients encounter retailers who are unaware of the new policy, please ask them to call 1-800-342-3009

Cash Assistance and Medicaid

- Post-storm, the regular eligibility rules for public benefits eligibility still apply, including
 - income and resource limitations
 - Immigrant eligibility requirements (but different than the requirements for federal benefits)
- Many new clients may now be eligible as a result of storm disruptions, including lost jobs, decreased income, etc.
- New applicants are reporting problems with HRA, specifically they are being told HRA is not processing new applications and only for continuation benefits.
 - **This is not true.** Clients may apply for new benefits. If you hear about this problem, please contact NYLAG Attorney Camille Zentner at czentner@nylag.org

Immigration Issues

- An applicant or household member must be a U.S. Citizen or Qualified Alien to receive federal benefits like FEMA and SBA loans
 - If a household member is eligible, undocumented family members need not worry about filing the application – it will not result in reporting to USCIS
 - For example, undocumented parents can apply on behalf of U.S. citizen children
- City and state programs often have different immigration eligibility rules and more people may be eligible for benefits
- If clients missed or were unable to attend interviews or appointments, they should contact USCIS but need not panic

Family Law Issues

- Clients may have missed court dates or be worried about upcoming dates that they may not be able to attend
- Clients may need to modify custody or visitation orders based on changes of circumstances
 - Inhabitability of home or inability to travel to comply with visitation order may necessitate modification
 - A mere change of address does not require a modification
- Clients could experience increased domestic violence

New York City Family Court Info

- All of New York's Family Courts are open and operating
 - Bronx: (718) 618-2098
Brooklyn: (347) 401-9600
 - Manhattan: (646) 386-5200
 - Queens: (718) 298-0197
 - Staten Island: (718) 675-8800
- Clients should make good faith efforts to comply with all court orders, but need not panic
- We expect that for the next couple of weeks, Family Courts will be flexible in helping impacted clients

Consumer Issues

- Beware of scams!
 - Clients must ask for identification for anyone offering assistance at home
 - There is no fee to apply for FEMA or other benefits
- Clients may be facing unexpected credit problems due to disruptions in income
 - Clients can work with credit counselors to negotiate repayment schedules
 - Clients should get any modification or forbearance agreements in writing

Other Issues

- Disruptions to Social Security Benefits
 - Supplemental Security Income (SSI), Social Security Disability (SSD) and Social Security Retirement (SSR) benefits
 - If clients did not receive their benefit check, they can go any open Social Security office and request an immediate payment.
 - To find the nearest open SSA office:
 - Call 1-800-772-1213 (TTY 1-800-325-0778)
 - Go to: <http://www.ssa.gov/emergency>
- Education:
 - NYC children can now attend any public school without providing proof of residence in the district
 - Parents whose disabled children's school services have been disrupted by the storm should call NYLAG's Special Education Unit

Other Issues, cont'd

- Medicaid prescriptions can be filled up to three times simply by going to a pharmacy with an empty medicine bottle
 - No need for a written prescription
- Reimbursement by ConEd: ConEd is currently taking the position that they will not reimburse customers for food lost due to Sandy.
 - However, area residents have also experienced subsequent power outages. It is unclear if ConEd will reimburse for food lost during subsequent outages. For now, we encourage clients to seek reimbursement although we do not know if they will be successful.

Volunteering with NYLAG

- For storm-related volunteer opportunities, please check NYLAG's Storm Response Unit website and calendar regularly:

www.nylag.org/stormhelp

- NYLAG will also be sending out regular announcements about new volunteer opportunities by email to individuals who have signed up to volunteer with us, as well as our law firm and corporate pro bono partners.
- If you are interested in volunteering and have not yet contacted us, please email: volunteer@NYLAG.org
 - Be sure to note that you attended this training.

Thank You

Thank you for joining with NYLAG to secure the legal rights of the victims of this terrible natural disaster in the difficult days and months ahead.

- NYLAG's Storm Response Unit
 - Legal Assistance Hotline: 212-584-3365
 - Email: StormHelp@nylag.org
- NYLAG's temporary intake line: 212-584-3300

THANK YOU FOR ATTENDING TODAY!

*More information at the [NYC Pro Bono Center](http://www.probono.net/ny/nyc/)
www.probono.net/ny/nyc/*



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Contact Information

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