



Understanding the Stafford Act

Providing Disaster-Related
Legal Assistance
to Individual Victims
of Hurricanes and
Other Natural Disasters

By John K. Pierre

When a natural disaster strikes, such as a hurricane, many survivors are forced from their homes because such residences are severely damaged or otherwise made uninhabitable. Some survivors are rendered homeless and do not regain permanent housing for significant amounts of time, ranging from weeks, months or even years after the natural disaster! Over the last 20 years, Americans have been victimized by a number of major natural disasters that have killed thousands and left hundreds of thousands without homes immediately after the disaster. While the needs of victims affected by natural disasters are generally served by a myriad of (a) federal, state and local government agencies, (b) private entities and (c) nonprofit or non-governmental organizations, most individual victims of natural disasters look to the Federal Emergency Management Agency (FEMA) to provide aid to them in their hour of need.

Most attorneys are unfamiliar with how FEMA works to provide assistance to individual victims of natural disasters and the Stafford Act which provides FEMA federal legislative authority for an elaborate web of programs designed to alleviate the suffering and damage which results from such disasters. Attorneys can play a vital role in helping individual victims of natural disasters understand their rights under the Stafford Act.

Overview of the Stafford Act and Its Relevance to Hurricanes Katrina and Rita

On Aug. 29, 2005, just prior to dawn, Hurricane Katrina struck the Gulf Coast region of the United States, devastating southeastern Louisiana, before moving across Mississippi and into Alabama. Hundreds of thousands of people were forced to evacuate their homes. Soon thereafter, in late September, Hurricane Rita struck in southwestern Louisiana, causing tens of thousands of people to evacuate their homes. Hurricanes Katrina and Rita were acts of nature with inhumane consequences that overwhelmed the resources of state and local governments. When catastrophic natural disasters occur, the principal federal statute providing assistance to state and local governments, as well as to individuals, is the Robert T. Stafford Disaster Relief and Emergency Act (Stafford Act).¹ Under the Stafford Act, the federal agency principally charged to care for Americans who are victims of natural disasters is FEMA.

The mission of FEMA as set forth in the Stafford Act and corresponding regulations is to assist the efforts of the states in expediting the rendering of aid, assistance and emergency services, and the reconstruction and rehabilitation of areas devastated by disasters.² FEMA assists state and local governments in carrying out their responsibilities to alleviate the suffering and damage that result from major disasters and emergencies.³ FEMA, among other things, provides federal assistance programs for public

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and private losses and needs resulting from disasters.⁴

Before FEMA can render assistance in any particular place and time, a governor of a state must request that the President of the United States declare the existence of a major disaster or emergency in the area.⁵ The governor's request must be based on a determination that the disaster is so severe and large that an effective response is beyond the capabilities of the state and local governments affected by the disaster.⁶ Based on that request, the President may declare that a major disaster or emergency exists, thus triggering the availability of FEMA assistance.⁷

If the President declares a "major disaster" or emergency, he or she may:

- ▶ direct federal agencies to use their authorities and resources granted under federal law to support state and local assistance efforts;⁸
- ▶ coordinate all disaster efforts between federal agencies and state and local governments;⁹
- ▶ provide technical and advisory assistance to state and local governments;¹⁰ and
- ▶ assist state and local governments in the distribution of medicine, food and other consumable supplies, and emergency assistance.¹¹

The provisions of the Stafford Act also authorize federal assistance to individuals and households. In particular, the

Act provides that the President may provide temporary housing assistance to individuals and households who are displaced from their pre-disaster primary residences or whose pre-disaster primary residences are rendered uninhabitable as a result of damage caused by a major disaster.¹² More specifically, the Act outlines two types of temporary housing assistance — financial assistance and direct assistance. Financial assistance provides funds to rent alternate housing accommodations.¹³ Direct assistance provides temporary housing units, when there may be a lack of available housing resources for rent.¹⁴ Under the Act, the President is empowered to determine appropriate types of housing assistance to be provided, based upon factors such as cost effectiveness, convenience to the individuals and households and such other factors as the President may consider appropriate.¹⁵

Financial assistance, sometimes known as "rental assistance," is supposed to enable victims of disasters to rent alternate housing accommodations, existing rental units, manufactured housing, recreational vehicles or other readily fabricated dwellings. FEMA commonly administers the rental assistance program by granting a check to eligible individuals for an initial three-month period to cover the cost of rent and thereafter provides assistance beyond the three-month period upon proof of need.

Direct assistance, sometimes known as "trailer assistance," enables disaster victims to receive actual temporary housing units, such as a trailer or mobile home. Trailer assistance is available to victims who cannot use rental assistance because of, for example, a lack of rental housing.¹⁶ The Stafford Act authorizes rental and trailer assistance, which is intended to be "temporary," to both pre-disaster renters and homeowners. Under the Act, temporary housing assistance is available for 18 months from the date that the President declared a disaster, but may be extended beyond that time.¹⁷ This 18-month period applies to both rental and trailer assistance. Applications for temporary housing assistance and for the

distribution of federal benefits pursuant to the Stafford Act must be done in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age or economic status.¹⁸

Contrary to popular belief, individual recipients of housing assistance are not guaranteed housing assistance for the full 18 months from the date of declaration of a major disaster. In addition to housing assistance, the Stafford Act authorizes the President to provide financial assistance to address "other needs."¹⁹ Specifically, the Act provides that the President may provide financial assistance to victims of a major disaster to meet disaster-related medical, dental and funeral expenses, or to address personal property, transportation and other necessary expenses or serious needs resulting from the major disaster.²⁰ By regulation, FEMA requires applicants for "other needs" assistance to apply for a disaster loan from the Small Business Administration to cover the expenses for which such assistance is sought. One criterion of eligibility for "other needs" assistance is denial or inadequacy of an SBA loan.²¹

The financial assistance to address other needs is known as the Individual and Family Grant Program. In relation to both "other needs" assistance and temporary housing assistance, the Act provides that no individual or household shall receive financial assistance greater than \$25,000, adjusted for inflation, with respect to a single major disaster.²²

Concern over fraud and receipt of duplicative benefits is addressed in the Act. The Act prohibits duplication of benefits. Hence, the Act requires that the President, in consultation with any federal agency providing assistance under the Act, ensure that no one receives assistance for any part of a loss that is covered by any other source.²³ For example, FEMA regulations require an applicant for assistance under the Act to apply for insurance proceeds to cover any insured loss. The regulations state that assistance for one temporary residence will generally be provided for each pre-disaster household.²⁴ This pre-disaster household

provision is known as the "Shared Household Rule."

Delegation of Presidential Authority, Immunity and Litigation

The Act authorizes the promulgation of regulations to carry out its provisions and expressly permits the President to delegate the authority conferred upon him or her by the Act.²⁵ Pursuant to that provision, the President has delegated to the FEMA Director most of the functions vested in the President by the Stafford Act, with a few exceptions.²⁶ However, the power to declare major disasters has not been delegated.²⁷ Hence, while the President has delegated his authority under the Stafford Act to FEMA, the President has not delegated the authority to declare a major disaster.

FEMA and/or any other federal governmental agency is not liable for any claim based upon the exercise or performance of or failure to exercise or perform a "discretionary" function or duty to carrying out the provisions of the Stafford Act.²⁸ The federal government vigorously defends statutory immunity with respect to the exercise or performance of "discretionary" functions.²⁹ FEMA, however, despite the statutory immunity with respect to discretionary functions, can be sued successfully if the plaintiffs raise constitutional claims such as due process and equal protection.³⁰

Conclusion

As FEMA has discovered recently, the importance of quickly responding to natural disasters is of paramount importance. Partly because of Hurricanes Katrina and Rita, Louisiana attorneys are now aware more than ever that natural disasters will give rise to legal needs previously unanticipated and unimaginable. Given this new reality, lawyers now play a critical role in natural disaster relief efforts and must become more familiar with legal issues created by natural disasters.

1. 42 U.S.C. § 5121, *et. seq.*
2. 42 U.S.C. § 5121.
3. 44 C.F.R. § 206.3.
4. *Id.*
5. 42 U.S.C. § 5170.
6. *Id.*
7. *Id.*
8. 42 U.S.C. § 5170a.
9. *Id.*
10. *Id.*
11. *Id.*
12. 42 U.S.C. § 5174(a)(1).
13. 42 U.S.C. § 5174(c)(1).
14. *Id.*
15. 42 U.S.C. § 5174(b)(2)(A).
16. 42 U.S.C. § 5174(c)(1)(B)(I).
17. 44 C.F.R. § 206.110(e).
18. 42 U.S.C. § 5174(a).
19. 42 U.S.C. § 5174(c).
20. *Id.*
21. 44 C.F.R. § 260.119.
22. 42 U.S.C. § 5174 (h).
23. 42 U.S.C. § 5155.
24. *Id.*
25. 42 U.S.C. § 5164.
26. Executive Order 12,673; 54 Fed. Reg. 12,571 (March 23, 1989).
27. *Id.*
28. 42 U.S.C. § 5148.
29. *See e.g.*, *Graham v. FEMA*, 149 F.3d 997 (9 Cir. 1998); *City of Bruno v. FEMA*, 181 F. Supp. 2d 1010 (N.D. Cal. 2001).
30. *See Lockett v. FEMA*, 836 F. Supp. 847 (S.D. Fla. 1993).

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