

# Your Legal Rights in the Face of a Disaster



A presentation by the  
Disaster Response Project  
Northeast New Jersey Legal Services  
(NNJLS)

# Introduce the Presenter

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# About Us

Northeast New Jersey Legal Services (NNJLS) is a private, non-profit, public interest law firm that provides free legal help in civil (non-criminal) matters to low-income and underserved individuals and families in Bergen, Hudson, and Passaic Counties.

We also work to increase the public's knowledge of their rights and responsibilities through community legal education.

# Our Mission

NNJLS's mission is to ensure equal access to justice for low-income residents of Bergen, Hudson, and Passaic Counties, New Jersey.

**No one should be denied a meaningful opportunity to have their day in court simply because they cannot afford a lawyer.**

# NNJLS PROGRAM AREAS

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## PUBLIC BENEFITS

Unfair denial of welfare (TRA, cash assistance, sanctions), unemployment, food stamps/SNAP, SSI, Medicare, Medicaid, PAAD, and more.

## CONSUMER PROTECTION

Consumer debt, bankruptcy, identity theft, deceptive lending and sales, and more.

## DOMESTIC VIOLENCE AND SEXUAL ASSAULT

Restraining orders and support.

## ELDER JUSTICE

Elder abuse and neglect, financial exploitation, Social Security and Medicaid, powers of attorney, wills, and more.

## EDUCATION

Securing access to special education and disability accommodations, and more.

## FAMILY LAW

Custody, child support, and divorce.

## VETERANS

Access to VA benefits, including medical care and mental health care.

## TAXES

Unpaid taxes and other IRS issues.

## IMMIGRATION

Naturalization and application for citizenship certificates. Replacement of lost, stolen or destroyed documents. Family petitions, VAWA and U-visas, adjustment of status.

## RE-ENTRY

Expungement of criminal records and more.

# Introducing the Disaster Response Project

- It is the newest program at NNJLS
- Primary Goal = provide legal assistance to victims of natural disasters
- Currently, our main priority is to assist victims of Hurricane Ida

# Why is Disaster Assistance Important?

- Disasters are increasing in frequency and cost
- Last summer, 1 in 3 Americans experienced a weather-related disaster of some sort.
- Hurricane Ida hit Northern NJ in September of 2021 and was the fourth most costly Atlantic hurricane in US history
- As climate change worsens, we can expect disasters to happen more often and to cost more when recovering.

# Who are the most vulnerable?



- Low income individuals
- People with disabilities
- People with functional and access needs
- Rural and/or marginalized communities
- Racial and ethnic minorities
- Children, youth and adolescents
- Older adults
- Evacuees
- Homeless



# Defining **Emergency**

## **Stafford Act Sec. 102(1)**

Any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

## **FEMA**

Any occasion or instance [...] that warrants action to save lives and to protect property, public health, and safety.

# Defining Disaster

“An occurrence of a natural catastrophe, technological accident, or human caused event that has resulted in severe property damage, deaths, and/or multiple injuries.”

Federal Emergency Management Agency (FEMA)

# Defining Disaster

## Stafford Act 42 U.S.C. 5122

Sec 102. (2) *any natural catastrophe, [...] or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.*

# What's the Difference

## Emergency Declarations

- Made when a threat is recognized
- Intended to supplement and coordinate local and state efforts prior to the event such as evacuations and protection of public assets
- Can't exceed \$5 million
- Prevention

## Disaster Declarations

- Made as a result of a disaster or catastrophic event
- Constitutes a broader authority that helps states and local communities, as well as families and individuals, recover from the damage caused by the event
- Recovery

# Federal **Disaster** Declaration Process

## How do we get a Major Disaster Declaration?

### 1. Local Gov:

After an incident occurs, the local government assesses the damage and makes a request for assistance to FEMA's Regional Administrator. All requests for MDD must start with a request from the Governor of the affected state.

### 2. FEMA Regional

State and Federal officials conduct PDA (Preliminary Damage Assessment) to estimate the extent of damages. If merited, FEMA Regional Administrator elevates to FEMA Headquarters.

### 3. FEMA HQ

FEMA HQ receives the Governor's request and makes recommendation to DHS.

# Federal Disaster Declaration Process

## How do we get a Major Disaster Declaration?

### 4. DHS (Department of Homeland Security)

DHS forwards the Governor's request to the White House.

### 5. POTUS (President of the United States)

The President makes the final decision to declare a major disaster based on the Governor's request.

# Structure of FEMA Assistance

Public Assistance

Individual Assistance

Hazard Mitigation

# FEMA Reforms Individual Assistance

## FEMA Reforms Disaster Assistance

FEMA implemented the most significant updates to disaster assistance in the last 20 years. These updates include:

- Flexible funding provided directly to survivors when they need it most.
- Expanded eligibility to help more people recover faster.
- Simplified application process to meet survivors' individual needs.

These changes apply to disasters declared on or after **March 22, 2024**.



# Individual Assistance Overview

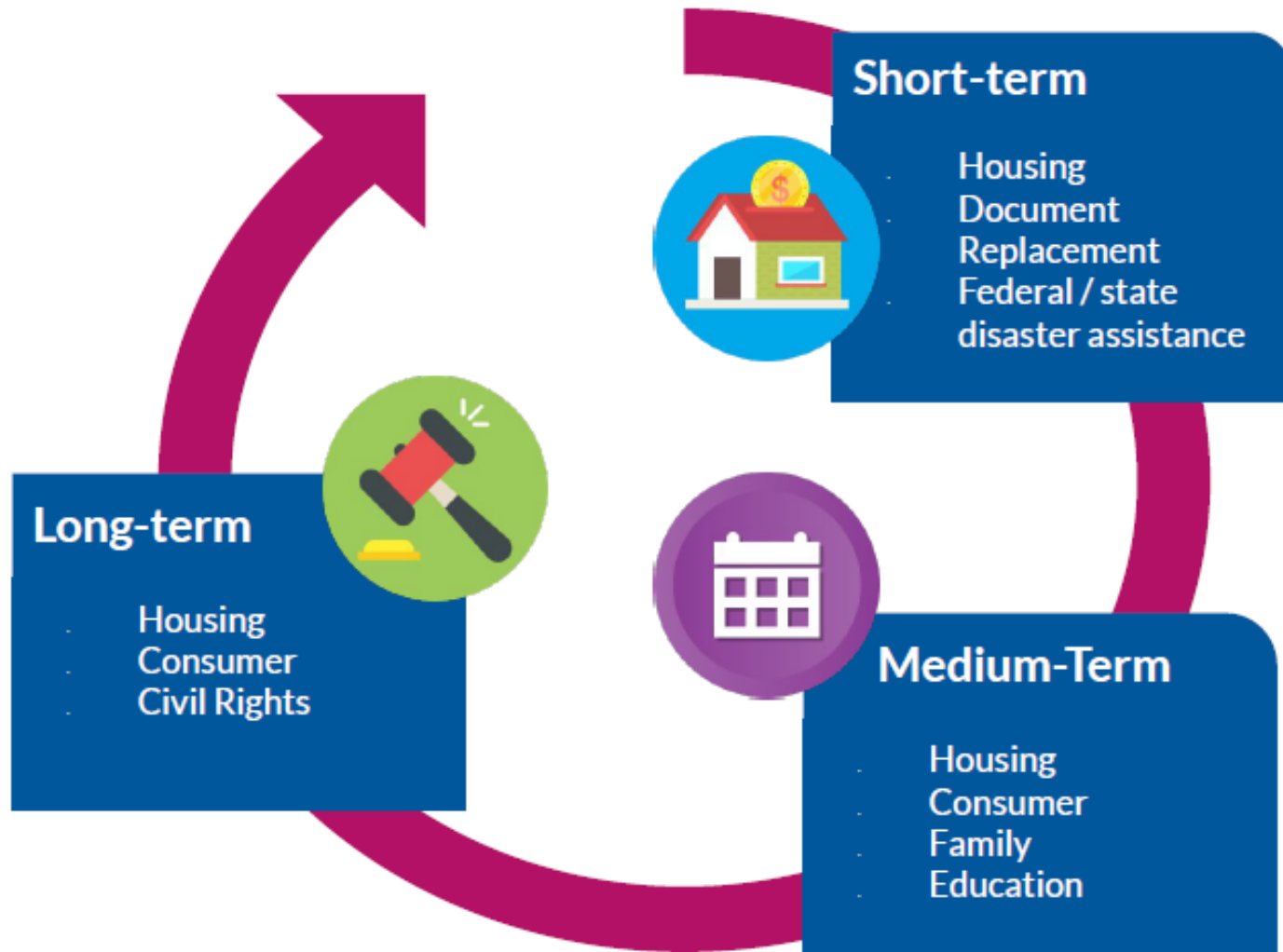
- Mass Care and Emergency Assistance: shelter, feeding, mass evacuee etc
- Individuals and Households Program Assistance: temporary housing and repairs, hazard mitigation assistance, uninsured or under-insured expense etc
- Disaster Case Management: supplemental award made to a state, tribal, or territorial government or non-governmental organization
- Crisis Counseling Assistance and Training Program
- Disaster Legal Services
- Disaster Unemployment Assistance
- Voluntary Agency Coordination

# General Eligibility for Individual Assistance

1. U.S. Citizen, Non-Citizen National, Qualified Alien
2. Verifiable Identity through Valid SS#
3. Uninsured or under-insured
4. Needs are directly caused by a declared disaster
5. Occupancy/Ownership



# Legal Issues that Arise in a Disaster



# Legal Issues That Arise: Short-Term

1. Housing Issues for renters and homeowners
2. Document Recovery
3. FEMA claims
4. Public Benefits
5. Consumer
6. Emergency Unemployment
7. Education
8. Family
9. Health Care Access



# Legal Issues That Arise: Medium-Term

1. Housing habitability issues for renters
2. Housing repair issues for homeowners
3. Insurance claims and appeals
4. FEMA denials and appeals
5. Public Benefit appeals
6. Consumer
7. Employment
8. Education
9. Family issues and estate planning and probate



# Legal Issues That Arise: Long-Term

1. Property title issue
2. FEMA recoupment
3. Home repairs and contractor fraud
4. Foreclosure
5. Mortgage
6. Consumer issues
7. Bankruptcy
8. Civil and disability right cases



# Legal Issues in Detail

- I. Landlord Tenant Issues
- II. Document Replacement
- III. Applying for Public Benefits
- IV. FEMA Applications
- V. Disaster Relief Insurance Basics
- VI. Contractor Issues



# I. Landlord Tenant Issues

- If a home is flooded, what can a tenant do to break their lease?
- What notices need to be sent?
- How to get security deposit back?
- If tenants will continue live in the affected unit, how can they have a portion of their rent deducted?
- Warranty of habitability
- Fire statute – NJSA 46:8-6 building injured by fire w/o tenant's fault, landlord shall repair as speedily as possible and rent shall cease until complete repair



# Landlord Tenant Issues

## Security Deposit Return

**46:8-21.1 Return of deposit; displaced tenant; termination of lease; civil penalties, certain.** Within 30 days after the termination of the tenant's lease or licensee's agreement, the owner or lessee shall return by personal delivery, registered or certified mail the sum so deposited plus the tenant's portion of the interest or earnings accumulated thereon, less any charges expended in accordance with the terms of a contract, lease, or agreement, to the tenant or licensee.

**Within five business days after:**

**a. the tenant is caused to be displaced by fire, flood, condemnation, or evacuation, and**

# II. Document Replacement

- Birth certificate
- Driver's license
- Social Security card
- EBT card
- State identification card
- Citizenship certificate
- Deed and mortgage



# III. Applying for Public Benefits

Lawyers can help clients in applying for:

- Food stamps
- SBA loans
- Emergency assistance
- Emergency unemployment benefits



# Post Ida Government Fund

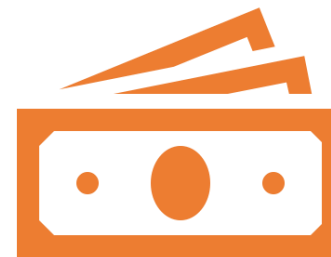
- Following Hurricane Ida (9/1/21), Congress appropriated \$5 billion in HUD for CDBG-DR (Community Development Block Grant Disaster Recovery) on 9/21/21.
- In May 2022, HUD allocated \$228 million to New Jersey. DCA handles the fund.
- 2/27/23 – 5/1/23, DCA opens pre-application portal for homeowners to apply for Homeowner Assistance and Recovery Program (HARP) which provides grants to rehabilitate, reconstruct and/or elevate their eligible storm-damaged homes. For structural, utility, grading and slope stabilization and drainage.
- 2/27/23 – 6/1/23, DCA opens pre-application portal for tenants Tenant-Based Rental Assistance (TBRA) up to 24 months of rent in the future.

# Post Ida Government Fund

## Temporary Housing – Assistance from the Department of Community Affairs



Temporary Housing: Pays for a household who had to evacuate their home to rent a new place while repairs are being completed on their home



Payments are based on the area's median rental costs

# IV. FEMA Applications

- FEMA = federal agency which provides disaster relief funds to individuals and families who were negatively impacted by a natural disaster
- Displaced renter = they may be able to provide with temporary relocation assistance
- Homeowner = they may be able to provide you with funds to repair your home
- Lawyers can help craft your application-60 day deadline



# Types of FEMA Assistance

## Housing Assistance

- Home Repair
- Rental Assistance
- Lodging Expense
- Reimbursement
- Replacement Assistance
- Manufactured Housing Units
- Direct Lease

## Other Needs Assistance

- Personal Property
- Moving and Storage
- Funeral Assistance
- Medical and Dental
- Child Care
- Critical Needs
- Clean and Removal Assistance



# FEMA Issues for Homeowners

- Eligibility
- Proving you own the property
- Proving it is your primary residence
- Disaster related damage vs. deferred maintenance
- Proper Use of FEMA money
- Was the money used for the purpose it was given
- Duplication of Benefits
- Cannot have received money from another source for the same damage covered by FEMA

# FEMA and Insurance

- FEMA will not pay for repairs covered by insurance
- Once homeowners receive their insurance awards, there may be grounds to appeal FEMA Decisions to show there is not a duplication of benefits

# Housing Assistance

- This is money provided to a homeowner to repair disaster-related damage to their home. It includes both labor and the cost of materials.
- The goal is to make the home safe, sanitary, and functional, not to restore the home to the condition that it was in before the disaster.
- FEMA may pay for tree removal to make the home safe (removing tree off roof, but not removing trees off property)

# Other Needs Assistance

- This is assistance paid for other necessary and serious needs caused by the disaster.
- It can be medical or dental expenses, funeral costs, replacement of personal property, storage, auto damage, etc.

# Appeals

## (44 CFR 206.115)

- FEMA will issue a written decision determining what benefits the applicant will receive.
- If the applicant disagrees with the decision, they have the right to file a written appeal.
- The appeal needs to be postmarked or faxed within 60 days of the date on the Notice of Decision.
- The appeal can also be submitted online.

# What to Include in the Appeal

- The appeal needs to include the following information:
- A written explanation of why the applicant does not agree with the decision.
- Any new information the applicant has (pictures of the damage, repair estimates, length of repairs, receipts for repairs already completed).
- The letter must be signed by the attorney and the applicant's signature must be notarized.

# Spending FEMA Money

- The money should be used for the purpose that FEMA gave the money
- FEMA recipients need to keep receipts for how they spent the FEMA money
- FEMA can audit the FEMA awards for three years after the disaster

# FEMA Recoupment

- At times, FEMA will determine that an applicant was overpaid benefits.
- This often happens because the applicant receives an insurance settlement after they received their FEMA award.
- FEMA finds this to be a duplication of benefits.
- It also sometimes happens because FEMA has changed the way they interpret their rules and policies.
- In a recoupment case, FEMA is not alleging the applicant did anything wrong in the application process, but rather that FEMA made the error in processing the application.



# FEMA Recoupment

- The recoupment process starts when an applicant receives a Notice of Debt letter.
- The letter states that the applicant was overpaid benefits and needs to repay these benefits.
- One major problem that comes up is FEMA often only has an applicant's temporary address after a disaster. This address is often no longer valid when FEMA sends out the recoupment letter years later. Therefore, it is important to remind applicants to keep their address updated with FEMA.

# Recoupment Appeal

- If the applicant disagrees with the Notice of Debt, the applicant can appeal in writing.
- The applicant has sixty days from the date of the letter to file their appeal.

# What to Include in the Recoupment Appeal

- The letter should include the following information:
  - A written explanation of why the applicant does not agree they owe the money.
  - A written explanation of why there was not a duplication of benefits. It is helpful to show what the total cost of the repairs were, the amount insurance paid, and the amount FEMA paid.
  - For example, it may cost \$50,000 to repair the house. The insurance company paid \$10,000 and FEMA paid \$15,000. The applicant can argue this is not a duplication of benefits because the FEMA money was not used to pay for the same repairs as the insurance proceeds.

# What to Include in the Recoupment Appeal -continued

- The letter needs to be signed by the attorney and the applicant's signature needs to be notarized.
- The letter also needs to include a photocopy of a state-issued identification card.
- The applicant needs to include their full name, the last four digits of their Social Security number, and their disaster and FEMA application numbers on every page of the submission.
- FEMA states that you can request an oral hearing, but they generally make their decisions based on the written documents.

# Recoupment Post-Appeal - continued

- Often the applicant is in no position to repay FEMA.
- The applicant can request in writing that FEMA not collect from them.
- The applicant will need to complete a form showing their monthly income and expenses.
- The applicant will need to write a letter explaining why it would be a hardship to repay the debt.
- FEMA can forgive all of the debt, some of the debt, or none of the debt.

# V. Disaster Relief Insurance Basics

- Determine type of insurance, type of disaster, and the damage that was done.
- Review the policy to determine if there is coverage and if there is coverage, the survivor should file a claim immediately.
- Filing a claim: deadlines
- Attachments: list of items damaged, receipts, estimate for repair work

# Insurance

1. Call immediately
2. Send a written notice
3. Photos and videos. If possible make repairs
4. Inventory of damaged or lost items
5. Keep receipts
6. Provide a list of expenses
7. Check for deadlines or special requirements
8. Send in proof of loss with photos, receipts etc.
9. Request partial or advance payments
10. Document all communication
11. Before signing anything, make sure no release or giving up

# 1. Homeowners Insurance

- Fire, wind, lightning or hail, but not damages caused by water, meaning any flood, storm surge, tidal water, tsunami, etc.
- Not cover earth movement such as earthquake, mudslide or sinkhole.
- Fallen tree must cause damage to your home or property.
- If safe, request an adjuster to examine.
- Document your losses and make all necessary temporary repairs
- Do not dispose of damaged personal property items until it's examined by an adjuster.
- Claim decision will be made; an amount may be offered to settle. claim could be denied.
- FEMA will not pay for repairs covered by insurance.



# Homeowners Insurance-appeal

- Appeal should be in writing;
- Policy dependent specifics, so refer to policy.
- NJSA 17:29E-9 requires companies to enforce internal appeal processes.
- Request investigation of the claim decision via the State of New Jersey Department of Banking and Finance & New Jersey Department of Banking and Insurance claims ombudsman.
- **Note:** The applicable time constraints on filing a lawsuit are policy specific, but most policies provide a 1-2 year period. In the absence of express provisions in the policy, an insured might be able to argue six years to file a lawsuit under NJSA 2A:14-1.

## 2. Flood Insurance

- NFIP (National Flood Insurance Policy) Program provides insurance to help reduce the socio-economic impact of floods.
- Managed by the Federal Emergency Management Agency (FEMA) via about 60 insurance companies and the NFIP Direct.
- Required: in “high risk” zone and have federally regulated loan

# Flood Insurance-continued

## Property Coverage:

- Electrical and plumbing services.
- Appliances. Furnaces and water heaters.
- Carpets, cupboards, paneling and book cases that are permanently installed.
- Detached garages.
- Clothing, furniture.
- Valuable assets.

## What is not covered:

- Damage that is not a direct consequence of the flood
- Damage inflicted by “earth movement” even where it is a consequence of the flood
- Preventable damage like mold
- Car damage, pools, fences. Foundation shifting

# 3. Renters Insurance

What is generally covered:

- Damage caused by fire, lightning
- Damage caused by explosions
- Vandalism
- Theft
- Sudden and accidental water damage
- Weight of ice, snow, sleet

What is generally not covered:

- Flooding
- Earthquakes
- Infestations
- Intentional actions by yourself or those in your household
- Mold (except where insurance policy covers this)

# 4. Automobile Insurance

- Normally, damage to a car from a disaster is covered under the comprehensive policy coverage, but the particular language and exclusions will control.
- Even when there is flood, wind etc. coverage may exist under a collision policy if the disaster and event causing the damage could be construed as a collision.

# How do you assess and review an insurance decision to assess merit for an appeal or further action?

- Review client's insurance policy and confirm if the claim was validly denied. You'll need to review coverage under the policy, exclusions, riders, addendums, and any related coverage documents.
- Then, if the claim was denied or underpaid improperly, send a written appeal to the insurance company within policy-proscribed timeframe. Appeal should point the insurer to sections of the policy showing that its claim decision was contrary to policy coverage language.

# General issues with any appeal (homeowners, flood or renters)

- Insurer may argue that the cause of damage/loss is not covered by the policy (e.g. floodwater damage is not covered by homeowners insurance; this would be accurate though).
- Usually some disagreement about the amount owed to insured or paid on the claim. Evidence of actual costs of repairs, work, materials, etc. may be valuable in an appeal.
- Know what the policy does and does not, and comply with policy deadlines. Missed deadlines can be automatically fatal to an otherwise meritorious claim or appeal.
- Contact New Jersey Department of Banking & Insurance, <https://www.state.nj.us/dobi/index.html> ; United Policyholders, [www.Uphelp.org](http://www.Uphelp.org) ; National Association of Insurance Commissioners, [www.naic.org](http://www.naic.org)

# VI. Contractor Issues

- Homeowners are often so desperate to hire a contractor to fix their home that they do not take as much care as they normally would in hiring a contractor.
- Often after a disaster, contractors (legitimate and scammers) descend on the disaster area and go door to door advertising their services.
- N.J.S.A. 17:16C–95 Door-to-Door Home Repair Sales Act of 1968.  
There is a limited right to rescind home repair contract made at the consumer's home for three "business" days; The right to rescind might be continuing if disclosure of this right not made, Swiss v. Williams, 184 N.J. Super. 243, 445 A.2d 486 (1982)(rev'd on other grounds).



# Door to Door Home Repair Act

The Door-to-Door Home Repair Act provides that if a home improvement contract is signed at any location other than the place of business of the home improvement contractor, and if it is for an amount greater than \$25.00, then the home improvement contractor must give the homeowner two copies of a "certificate" which provides:

- (1) The home repair contractor's name and place of business;
- (2) A description of the goods and services sold;
- (3) Indicate the amount of money paid by the owner at the time the home repair contract was entered into.

# Door to Door Home Repair Act -continued

- (4) A three day right of rescission in no smaller than 10 point, bold faced, type
- (5) The receipt may not contain a provision in which the homeowner waives his rights under the Door to Door Home Repair Act.
- (6) If the contractor regularly deals with homeowners for whom English is not their primary language, then the contractor must provide one certificate in the language of the homeowner and the other in English.

# Home Repair Laws and Regulations

- New Jersey Consumer Fraud Act N.J.S.A. 56:8-1 et seq  
56:8-2 prohibits frauds, misrepresentation, unconscionable commercial practices  
  
56:8-19 If ascertainable loss of money or property, then triple damage and attorney fee.
- Home Repair Regulations of N.J. Division of Consumer Affairs:  
N.J.A.C. 13:45A-16.1 et seq Important regulation specifying what must be in the contract, and the process.
- Cox v. Sears Roebuck & Co., 138 N.J. 2 (1994) Violation of the Home Repair Regulation (no building permit) is Consumer Fraud Act violation; Consumer can prove loss with numerical estimate of cost of redoing the work; illegal debt demanded could be ascertainable loss.

# Home Repair Laws and Regulations-continued

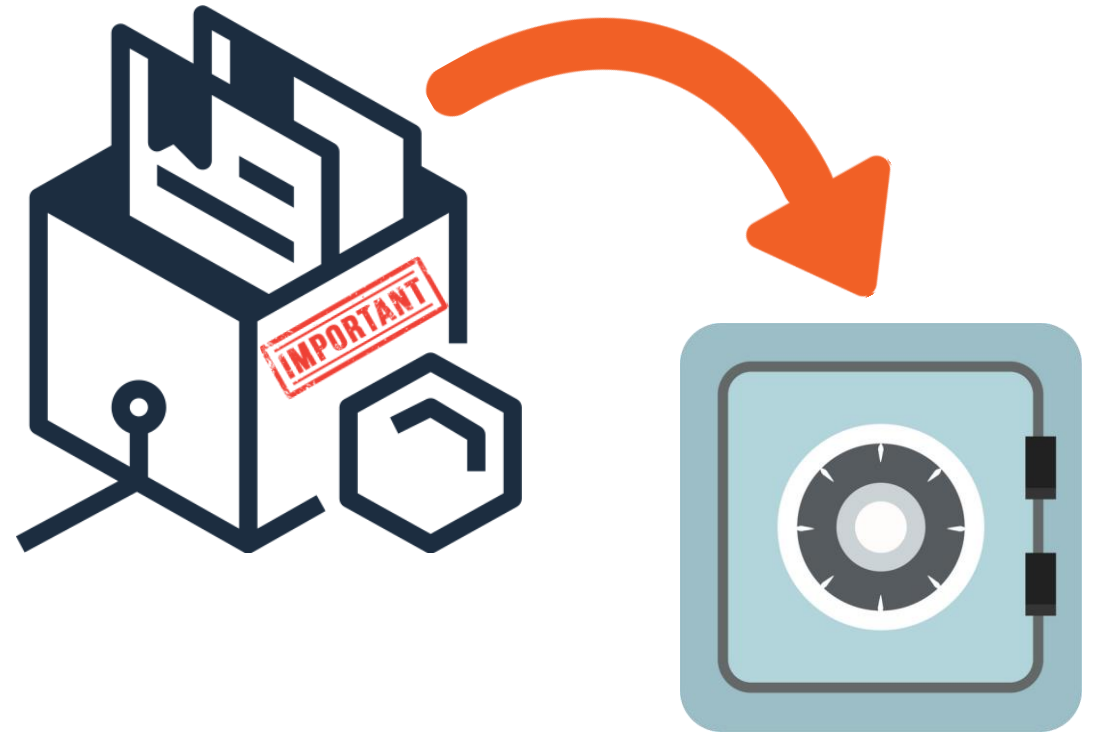
- Home Repair & Home Elevation Contractors: both regulated by DCA
- Do research on the contractor before signing an agreement and before paying any money. Lawsuits may be of limited effectiveness / meaning for a favorable outcome when the contractor is missing or insolvent (or both).
- DCA and other methods for mediation or negotiation may benefit the client as a tool before litigation.
- Both professions are regulated by statute including the Consumer Fraud Act (NJAC 13:45A-16.1A) and other consumer-protective regulations & specifically: Home repair – NJSA § 56:8-136; Home elevation – NJSA § 56:8-138.2.



# Preparedness

# Preparedness: Individuals

- Locate and protect important documents
- Create a family plan
- Check insurance coverage
- Build an emergency kit
- Know your rights



# Preparedness: Organizations

- Research social services that can assist survivors
- Develop community partnerships
- Keep clients informed
- Volunteer



Before, during and after a disaster we must be persistent, be understanding, and brainstorm solutions with the community.

**legal services fights social inequity**

**dollar for dollar, legal aid is the most effective anti-poverty strategy available**

**legal services fights social injustice**

