

**AMERICAN BAR ASSOCIATION****STANDING COMMITTEE ON DISASTER RESPONSE AND PREPAREDNESS  
SECTION OF STATE AND LOCAL GOVERNMENT LAW****REPORT TO THE HOUSE OF DELEGATES****RESOLUTION**

1 RESOLVED, That the American Bar Association urges federal, state, local, territorial,  
2 and tribal governments to adopt standards, guidance, best practices, programs, and  
3 regulatory systems that make communities more resilient to loss and damage from  
4 foreseeable hazards and also recognize property rights, affordable risk mitigation, the  
5 interests of taxpayers, and protection of the environment.

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8 FURTHER RESOLVED, That the American Bar Association urges lawyers and law  
9 firms, federal, state, local, territorial, tribal and specialty bar associations, businesses, and  
10 other professional and nonprofit organizations to advocate for and actively participate in  
11 community resilience initiatives.

## REPORT

### I. Introduction

This resolution encourages communities to adopt standards, guidance, best practices, regulatory systems, and programs that will make communities more resilient to loss and damage from foreseeable hazards and enhance the disaster resilience of communities. These programs and standards must recognize: a) constitutional property rights, b) the affordability of such risk mitigation, c) the best interests of taxpayers, and d) protection of the environment. The Resolution is consistent with existing ABA policies and previous resolutions adopted by the House of Delegates.

Disasters continue to increase worldwide: wildfires, hurricanes, tornadoes, earthquakes, tsunamis, drought, floods, and pestilence. These realities, coupled with the recent increased attention to the idea of climate variability, resilience and sustainability, offer the legal community a unique challenge and opportunity to raise awareness about preventing disasters through actions promoted by lawyers, law firms and bar associations. ABA's leaders respond to disasters in the community. Through the Disaster Legal Services Program, the ABA's Young Lawyers Division and FEMA provide immediate temporary legal assistance to disaster survivors at no cost.

Because the ABA is assuming a leadership role in the area of community resilience, as well as disaster mitigation and response through the efforts of Standing and Special Committees, Sections, and the ABA's leadership, the ABA will be better able to communicate the core message that foreseeable hazards, threats, vulnerabilities and risks to communities are driving decision-making for emergency preparedness, and that community development, prevention, protection, mitigation, response and recovery should be done in such a way to recognize property rights, affordable risk mitigation, the interests of taxpayers, and protection of the environment.

### II. Engagement of the Legal Community in Community Resilience.

This Report is a call to action to lawyers, law firms and bar associations that is designed to create greater awareness of community resilience initiatives, and engage the members of the legal profession as civic leaders, key stakeholders and representatives of the community's social and economic institutions. The Resolution urges establishment of community resilience programs that will meet human needs, support a functioning economy, and provide jobs. There are many resilience approaches; some are community resilience initiatives and a few of them are annotated in the Report's footnotes.<sup>1</sup>

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<sup>1</sup> *Community resilience* is the ability of a community to

- Prepare for anticipated hazards
- Adapt to changing conditions
- Withstand and recover rapidly from disruptions

What does it mean to be resilient? Resilience is the ability to prepare for anticipated threats and hazards, adapt to changing conditions, and withstand and recover rapidly from disruptive events. Resilience is not merely “bouncing back” to the prior state after a disruptive event, but having a plan in place to “bounce forward” to a better state. It means having plans in place which increase emergency preparedness that also provides the benefit of making the communities more attractive to business investment and new residents. For the legal community, resilience means maintaining the rule of law in times of major disaster.<sup>2</sup> In successful resilient communities, the community resilience champions, resilience planning teams, and key public and private sector stakeholders are directly responsible for engaging the whole community, creating the vision, and achieving the level of commitment necessary for the success of community resilience programs, and carrying the programs forward. The community’s vision for the future is based on the principles that enhance resilience in a way that is consistent with the context and functions of the community.

A robust community resilience program represents the interests of the entire community and is contingent upon the ongoing collaboration of civic leaders, key public and private sector stakeholders, and community members. It spans activities ranging from preparing for hazard events, risk mitigation and post-event recovery, and should be proactive, continuous, and integrated into other community planning. Good management practice not only calls for a community resilience champion and planning team with broad representation across the community, but also makes clear that the representation of the key social institutions within the community and, in particular, representation of the economic institutions, is a necessity for the success of the community resilience program.

The community resilience champion working with the resilience planning team should form task groups of key private sector stakeholders and subject matter experts to participate and make recommendations. The resilience planning team should charter groups of key stakeholders with responsibilities for hazards, social dimensions, and infrastructure systems, such as buildings, transportation, energy, communications, and water and wastewater.

Typically, community resilience programs comprise assigned leaders from local government who are responsible for implementing codes, statutes and community plans, and authorized to collaborate and coordinate with other entities. Business and service professionals representing the community’s social institutions and infrastructure systems should be included on resilience planning teams, as well as on chartered groups with specific responsibilities. It is important to distinguish between those representatives who should serve as members of the resilience planning team, and those who should serve as key private sector stakeholders who are recruited for working groups.<sup>3</sup>

### III. Community Resilience: Make Your Community More Resilient.

Disasters continue to increase worldwide: wildfires, “Superstorm” Sandy, tornadoes, earthquakes, tsunamis, drought, floods and pestilence. These realities, coupled with the recent

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<sup>2</sup> See ABA’s [Rule of Law in Times of Major Disaster](#), August 2007.

<sup>3</sup> FEMA, [Local Mitigation Planning Handbook](#), March 2013, p. 2-1.

increased attention to the idea of climate variability, resilience and sustainability offer the community a unique challenge and opportunity to raise awareness about preventing disasters through actions taken by lawyers, law firms and bar associations, and other stakeholders.

### Call to Action

A better understanding of disasters and resilience is much needed. The ABA is uniquely situated to assist in such an effort. To this end, the Standing Committee on Disaster Response and Preparedness and the Section of State and Local Government Law have proposed a long-term community resilience initiative involving the entire ABA. The initiative will require the advice, comment and assistance of all sections, divisions, forums, and other entities within the ABA in development, implementation, operation and improvement. The community resilience initiative necessarily cuts across multiple disciplines within the ABA, and may also involve other organizations that are essential to the communication and advocacy of a powerful message in this nation.

### Communicate the Message of Resilience to the Community.

This Report focuses on the engagement of lawyers, law firms and bar associations (the “legal community”) to help their communities to address these challenges through a risk-based, pragmatic approach that takes into account community social goals, economic institutions, and participation of public and public sector stakeholders.<sup>4</sup> Several members of the Standing Committee on Disaster Response and Preparedness and the State and Local Government Law Section, have begun working on the specifics of the ABA-wide initiative. In addition, members of the Standing Committee on Law and National Security recognize the significance of community resilience to the nation, and are contributing their efforts to this resolution and report. All in the ABA are encouraged to participate in these efforts.

The core message is that threats and mitigation are driving decision-making and that development must be done in such a way to protect: a) property and rights of all, b) the interests of the taxpayer, c) the occupants of areas foreseeably at risk from hazards, and d) the environment. In short, safe development has a strong legal basis, and is affordable.

Other ABA entities and bar associations should consider the opportunities created by the need to reduce disaster losses and thus create a more resilient nation by using existing resources

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<sup>4</sup> *Examples for how community members depend on the built environment:*

- The need for housing and health care is universal.
- Children need school buildings.
- Neighborhoods need retail districts.
- Businesses need suitable facilities, functioning supply chains, delivery networks, and a workforce that is readily available.
- Everyone needs a transportation system, electricity, fuel, water, wastewater systems, and communication/information access.

Source: Community Resilience Planning Guide for Buildings and Infrastructure Systems, National Institute of Standards and Technology, 2015.

to convey this message through: a) a series of short practitioner focused, legally oriented publications; b) an updated ABA-sponsored compact disc on business continuity community resilience, continuity of operations and disaster mitigation; c) an ABA book on Community Resilience initiatives; and d) a webinar series on the book's chapters.

The ABA recognizes the vital roles played by the nation's architects, engineers, facility managers, and the building and standards communities in community resilience initiatives. Community resilience programs may include characterizing the social dimensions and built environments of a community, identifying the dependencies between social services and supporting built environments, and linking facilities and supporting infrastructure systems to desired social services. Social dimensions address the needs of individuals and social institutions, such as those representing government, business and industry, finance, health, education, community service, dispute resolution, religious and cultural beliefs, cybersecurity and data protection, and the media.

Thus, the ABA is actively seeking the support of professional associations with interests in the built environment and infrastructure systems, and business continuity programs for the resolution on community resilience initiatives.<sup>5</sup>

As a nation, we are able to do a better job of preparing for and recovering from disruptive events. Better design, construction and standards will play a large part in the community resilience program in a jurisdiction. We must all work together so we change the way we develop and redevelop property so that we see much less suffering, misery, despoliation and wasted resources caused by human disregard for foreseeable natural processes.

Across the United States, communities are always working to recover from disasters. While we cannot stop natural hazards and have only a limited ability to prevent technological and human-caused hazards, governments and communities can prepare for hazards and in doing so, minimize disastrous consequences. The extent of recovery and the ultimate outcome depend on the nature and severity of the events and the community's preparedness to prevent incidents, mitigate risk, protect assets, respond in a timely and coordinated way, and recover community functions. Together, these measures determine the community's resilience.

Making a community more resilient is a long-term proposition. Communities can develop short, medium and long-term goals for resilience. All solutions that make communities more resilient have associated costs. Communities can limit the scope of the resilience initiatives, and balance resilience plans against their available resources. Proper planning identifies gaps

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<sup>5</sup> *100 Resilient Cities*. The Rockefeller Foundation is dedicated to helping cities become more resilient to physical, social and economic challenges caused by "shocks and stresses," using the following four techniques:

- Establish a fully funded Chief Resilience Officer in city government to lead the city's resilience efforts.
- Solicit expert support for development of a robust resilience strategy.
- Develop and implement resilience strategies with help from public and private service providers, and NGO sectors.
- Network with other member cities and learn from each other.

Source: Rockefeller Foundation, 100 Resilient Cities. See [www.100resilientcities.org](http://www.100resilientcities.org)

between desired and anticipated performance, and prioritizes solutions to address gaps. Prioritization and participation by all stakeholders help communities develop plans that can achieve their community resilience goals within their means.

### Laws, Policies, Standards and Best Practices.

The ABA and other bar associations are uniquely positioned to help save lives and money by developing best practices and standards promoting resilience to disaster. One of the core ways the ABA and other bars can foster this resilience is helping identify the characteristics of laws and policies that tend either to augment or impair community resilience.

Practitioners and scholars agree that the laws—ordinances, statutes, constitutions, and regulations—can, and should be, a critical instrument for promoting resilience.<sup>6</sup> The laws guide choices that businesses and governments make concerning investment of resources in housing, offices, or infrastructure. In times of crisis, the laws also dictate the procedures that guide community revitalization and define the range of possible options for rebuilding towns, cities, and regions. But the laws currently ‘on the books’ may not adequately encourage businesses, families, institutions, and government agencies to make choices and investments that help them avoid or minimize the human and financial costs associated with natural hazards. Laws adopted decades ago were conceived when hazard mitigation, climate variability, and sea level rise weren’t part of businesspersons, legislators, or public officials’ lexicon.<sup>7</sup>

This century’s major disasters confirm that disasters’ human and economic costs are mounting. From Vermont to New York to the Gulf Coast, to Iowa and the Rocky Mountain West, disasters over the last 16 years confirm that thousands of human lives and hundreds of billions in government funds, insurance payouts, and personal savings are at stake. Although each of these communities and regions has made great strides toward recovery, many encountered exactly the same hurdles regarding impediments to spending government grant funds, interruption of business, and prolonged displacement of citizens. Lawyers, in their roles as

<sup>6</sup> See e.g. John R. Nolon, *Disaster Mitigation Through Land Use Strategies*, 23 *Pace Env'tl. L. Rev.* 959, 963–64 (2006); Patricia E. Salkin, *Sustainability at the Edge: The Opportunity and Responsibility of Local Governments to Most Effectively Plan for Natural Disaster Mitigation*, 38 *Env'tl. L. Rep. News & Analysis* 10158, 10158 (2008); Anna K. Schwab & David J. Brower, *Increasing Resilience to Natural Hazards: Obstacles and Opportunities for Local Governments Under the Disaster Mitigation Act of 2000*, 38 *Env'tl. L. Rep. News & Analysis* 10171, 10173–74 (2008); Daniel A. Farber, Jim Chen, Robert R.M. Verchick & Lisa Grow Sun, *Disaster Law and Policy* 345–64, 369–90 (2d ed. 2010); John Travis Marshall, *Rating the Cities: Constructing a City Resilience Index for Assessing the Effects of State and Local Laws on Long-Term Recovery from Crisis and Disaster*, 90 *Tulane L. Rev.* 35 (2015); *Disaster Resilience: A National Imperative*, National Academies of Science (2016).

<sup>7</sup> NOAA’s Coastal Community Resilience Index [Sempier et al 2010]

“The CRI is a tool communities can use to examine how prepared they are for storms and storm recovery. To complete the index, community leaders get together and use the tool to guide discussion about their community’s resilience to coastal hazards. It is a simple, inexpensive method to identify weaknesses a community may want to address prior to the next hazard event.”

Source: NOAA Website. See <http://www.noaa.gov/>

counsel to companies, city attorneys, local legislators, or neighborhood association leaders can play vital roles in building strong communities.

A greater level of awareness must exist in city halls, statehouses, and boardrooms that laws must be critically analyzed so that—at the very least—local, state, and federal partners can identify potential legal impediments to resilience and thus spark a continuing community dialogue about whether and how to make sure the laws are best serving their current and future needs. Lawyers are leaders, by virtue of their vocation, if not in their roles as CEOs, mayors, state officials, public servants, legislators, or in-house counsel. But lawyers, like all other leaders, are swamped with responsibilities and competing pressures. The ABA has an opportunity to help engage lawyers as community leaders to confront one of our nation's most serious public policy challenges.

### Responsibility for Underserved People.

For millions of Americans who can be considered members of underserved populations, including people of color, Native Americans, low income persons and persons with disabilities, emergencies such as natural disasters and terrorist attacks present unique challenges. Such persons, who are often most severely afflicted by disasters and other emergencies, have the fewest resources available to cope and therefore recover last, if they recover at all. Many underserved individuals may also have special needs including medications, medical equipment (e.g., portable respirators) and supplies, personal care assistants, service animals, and auxiliary aids and services for daily living. It is critical to integrate the needs of this community in disaster preparedness planning.

People with disabilities and their personal support networks must make a plan to protect themselves in the event of an emergency or disaster. They are in the best position to identify their specific needs and the resources required to meet them. At the same time, emergency managers, responders, public health officials, and service and care providers must be trained to address the unique needs of persons with disabilities, and be able to evacuate them safely and quickly and ensure that shelters are accessible to individuals with a variety of disabilities.

Such efforts must involve collaborating with persons with a wide range of special needs, disabilities, disability organizations, service providers, health care agencies, and residential and vocational program operators, among others—all of whom can provide expertise and resources—is essential to successful community resilience initiatives.

### Cybersecurity Preparedness

Like natural disasters, cyber-attacks are a modern-day threat to national and local, economic and societal importance. Today, a single attack on the country's data system does not damage an isolated device, rather, attacks target critical infrastructure that is integral to protecting our economy, national security and daily life.

While cybersecurity has been traditionally considered the responsibility of our country's information security and technology communities, preparing against cyber-attacks has now

become a shared responsibility among emergency managers at all levels of government and among the private sector. Such efforts must involve collaboration and information sharing between government agencies, as well as between the private sector and government. Cyber-specific incident plans are critical and persons at all levels must be properly educated and trained with regard to his/her role before, during, and after an attack. Continuous education and incident plan improvement is also essential. This could include monthly cyber-preparedness meetings to discuss recent threats and to review the incident plan. Routine cyber exercises would also be effective.

#### Strategy Selection, Determination, Implementation and Improvement.

Determining, selecting, implementing and improving community resilience strategy can prove to be a difficult task. A number of methods have proven to be successful, including determining the community resilience plan's scope, strategy options that mitigate risk or enable an appropriate response and recovery, performing cost-benefit analysis on strategy options, selecting the appropriate strategy based on largest positive net benefits, and receiving the community's endorsement for selected strategies before implementing them.

A community resilience plan is only as good as the strategy it reflects. Thus, it is essential that the resilience champion, as well as the planning team, task groups, local, county, state and federal government agencies responsible for facilities or infrastructure systems in the region, and public and private owners and operators of buildings and infrastructure systems, as well as businesses and industry, focus early on strategy design activities, including defining the solutions, identifying the scope and recommending the strategy of the community resilience program.

#### Incorporate Investment Decisions into Strategy.

Strategies are investments of time and resources into the community's requirements and short-term and long-term community goals to achieve greater resilience over time. To achieve its goals, the community needs to determine, design, select, and implement community resilience strategies through use of a standard economic methodology for evaluating investment decisions aimed at enhancing the resilience capacity. Based on the community's limited resources (e.g., assets, time, people, skills, equipment, premises, etc.), proposed strategies should be evaluated as to how they meet the community's determined objectives and goals, or where there are opportunities for improvement.

#### Ensure Strategy Addresses the Breadth and Reach of the Resilience Plan.

Community resilience investment strategies can include mitigation, disaster preparedness, design and construction, business continuity, emergency response (including cyber response), and pre-event recovery planning. Communities need a complete basis to understand gaps in performance, prioritize improvements using economic evaluation techniques, and allocate resources. To achieve this basis of understanding, communities should include desired performance goals versus anticipated (actual) performance of the built environment after disruptive events (i.e., hazards), and expected recovery sequences, time, and costs in their resilience plans. The community should also evaluate how the strategies, objectives, and goals



for resilience continue to meet the community's requirements, or where there are opportunities for improvement.

#### Mitigation/Climate Adaptation.

The House of Delegates strongly supports the goals and concept of reducing the impacts of disasters by hazard mitigation, using land use planning, building codes and insurance.

In 2009, the House adopted a series of resolutions concerning disasters. *See* 09M107A-G. Particularly pertinent to this proposal are Resolutions 107E and 107F.

In addition, in 2011, the House adopted a resolution endorsing the recommendations for An Effective National Mitigation Effort, a white paper on national mitigation prepared by the Association of the Directors of Emergency Management of the U.S. states, territories and the District of Columbia. *See* 11M114. The adoption of Resolution 114 permitted ABA to join the National Hazard Mitigation Collaborative Alliance. [For more information on the National Hazard Mitigation Collaborative Alliance, *see*:

[http://www.nemaweb.org/index.php?option=com\\_content&view=article&id=297&Itemid=43](http://www.nemaweb.org/index.php?option=com_content&view=article&id=297&Itemid=43) ]

The House has also adopted Resolution 110 strongly supporting efforts by "...federal, state, local, tribal and territorial authorities to identify and address the special needs of vulnerable populations, including but not limited to individuals with disabilities, children, the frail, elderly, homeless persons, domestic violence victims, undocumented persons, the impoverished, and persons with language barriers, when planning for and responding to disasters." *See* 15M110.

The Community Resilience initiatives in this Resolution will help implement these previous Resolutions of the House, help increase awareness and visibility of Hazard Mitigation and Climate Adaptation, and offer the possibility of improved services to the legal profession and the public.

#### IV. Conclusion.

This Resolution urges the ABA, lawyers and the legal profession to support community resilience initiatives. The Resolution recognizes and respects the important roles state and local governments, their resident business, legal and other professional and nonprofit organizations, and the general public have in this arena, with regard to making communities more resilient to loss and damage from foreseeable hazards while recognizing property rights, affordable risk mitigation, the interests of taxpayers, and protection of the environment. Further, by endorsing this resolution, the ABA, lawyers and the legal profession will become recognized stakeholders in further discussions on next steps and implementation strategies.

Respectfully submitted,

Chauntis Jenkins-Floyd, Chair  
Standing Committee on Disaster Response and Preparedness

Ellen F. Rosenblum, Chair

Section of State and Local Government Law

February 2017

**GENERAL INFORMATION FORM**

Submitting Entity: ABA Standing Committee on Disaster Response and Preparedness  
Section of State and Local Government Law

Submitted By: Chauntis Jenkins-Floyd, Chair  
ABA Standing Committee on Disaster Response and Preparedness

Ellen F. Rosenblum, Chair  
Section of State and Local Government Law

1. Summary of Resolution(s).

In recognition of the continuous and growing occurrence of natural and manmade disasters and the financial and human impact on communities, this Resolution urges governments, businesses, nonprofit sector, and the legal community to adopt standards, guidance, programs, and best practices, and consider regulatory systems that will make communities more resilient to loss and damage from foreseeable hazards and enhance the disaster resilience of communities, while recognizing legal, financial, and environmental interests of citizens. It further urges lawyers, and law firms, as well as federal, state, local and specialty bar associations to be active participants in and advocates for community resilience initiatives.

2. Approval by Submitting Entity.

The Resolution and Report have been approved by the Standing Committee on Disaster Response and Preparedness at the ABA's 2016 Annual Meeting. The State and Local Government Law Section approved the Resolution and Report at the Section Fall Council Meeting, November 20, 2016.

3. Has this or a similar resolution been submitted to the House or Board previously?

No

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

The House of Delegates over the past decade has adopted several policies related to disaster response and preparedness. This Resolution is a natural extension, building upon the concepts of disaster planning. For example, policies have addressed land use and building codes (9M107E), disaster planning for needs of vulnerable populations (15M110), hazard mitigation (11M115).

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

Not applicable.

6. Status of Legislation. (If applicable)

N/A.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The Standing Committee on Disaster Response and Preparedness and the Section of State and Local Government Law will develop and make available to bar associations and others legal resource materials on community resilience, adaptable for use in their communities, and sponsor webinars on this topic.

8. Cost to the Association. (Both direct and indirect costs)

None

9. Disclosure of Interest. (If applicable).

None.

10. Referrals.

This resolution is being provided to all ABA Sections and Divisions for support, especially those with subject matter expertise in topics related to community resilience, such as sections of Civil Rights and Social Justice, Infrastructure and Regulated Industries, Tort Trial and Insurance Practice, Young Lawyers Division, and Section of Real Property, Trust and Estate Law, and select Commissions and Committees, such as the Commission on Homelessness and Poverty and the Cybersecurity Task Force.

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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**EXECUTIVE SUMMARY**

## 1. Summary of the Resolution

In recognition of the continuous and growing occurrence of natural and manmade disasters and the financial and human impact on communities, this Resolution urges governments, businesses, nonprofit sector, and the legal community to adopt standards, guidance, programs, and best practices, and consider regulatory systems that will make communities more resilient to loss and damage from foreseeable hazards and enhance the disaster resilience of communities. It further urges lawyers and law firms, as well as federal, state, local and specialty bar associations to be active participants in and advocates for community resilience initiatives.

## 2. Summary of the Issue that the Resolution Addresses

Community resilience is a growing concept adopted by the public and private sector. It addressed the ability to anticipate risk, limit impact, and bounce back rapidly following a disaster. This resolution addresses an often neglected aspect of community resilience, the key and essential role of lawyers in community resilience planning and execution, and the role of laws and regulations in supporting community resilience while taking into consideration competing legal and financial interests.

## 3. Please Explain How the Proposed Policy Position will address the issue

This proposal addresses a key, often overlooked, aspect of community resilience: the role of laws and regulations that can promote or hinder such resiliency, and of lawyers to engage in community resilience efforts, by advocating for greater bar association participation.

## 4. Summary of Minority Views

Aware of none.