How to Prepare for an Emergency:

A Disaster and Business Recovery Plan
Chapter 1: Overview of the Disaster and Business Recovery Plan

Purpose:

To develop and establish a comprehensive Disaster and Business Recovery Plan that will enable a legal department, law firm, or a solo practitioner to handle and to recover from a range of emergency situations that have the potential to disrupt an office’s normal activities and operations.

1.1 Executive Summary:

Whether caused by human error or forces of nature, disasters are an unexpected reality that deserve and require a degree of advanced planning and preparation by responsible legal practitioners. In recent years, the devastation caused by numerous catastrophic disasters has been well documented in the media, making the seemingly impossible event a distinct reality in nearly everyone’s mind.

While certainly not intending to minimize or trivialize the personal or human effects arising from the impact such a disaster has on those directly within the footprint of an actual disaster, the present document focuses on the business aspect that such an event could have on those in our profession. Lawyers have ethical, fiduciary, and legal obligations to protect, safeguard, and preserve all clients’ interests and property. Failure to take the necessary steps and prepare in advance for a disaster may result not only in liability to clients and third parties, but also in the loss of a client’s business and trust. To prevent these and a host of other undesirable consequences, intellectual property practitioners, whether part of a law firm, a legal department, or in solo practice, are encouraged to spend the time necessary to develop and implement a comprehensive Disaster and Business Recovery Plan.

A Disaster and Business Recovery Plan is a written document designed to walk an individual or organization through the stepwise thought process associated with an anticipated emergency situation that, if occurring, would interrupt the office’s normal activities and operations. The following guide will aid the practitioner in developing an entity’s own Disaster and Business Recovery Plan.

The international nature of an INTA member’s practice necessitates a special focus not addressed in many of the disaster planning efforts previously undertaken by other organizations or even addressed in current country laws. More specifically, an INTA member facing a threatening disaster may not be able to meet his/her obligations or deadlines to a government agency or tribunal located in another region or country. In fact, that agency or tribunal may not even be aware of the situation. The guidelines set forth in this document are not a complete solution, but are intended to raise awareness and encourage our membership to take certain advanced precautions which would make post-recovery from catastrophe more manageable.

1.2 Phases:

The development and establishment of a disaster and business recovery plan comprises the following phases:

1. Develop a Disaster and Business Recovery Plan
2. Document the Plan

3. Maintain the Plan

4. Activate the Plan

5. Restore the Office’s normal activities and operations

See Appendix A for a flow chart highlighting the overall approach for the development, documentation, and implementation of the Disaster and Business Recovery Plan.

1.3 Definitions:

1. DBRP: Disaster and Business Recovery Plan

2. Disaster/Emergency: any foreseeable or unforeseeable event that significantly disrupts the legal office’s activities. It may include both natural disasters, such as geological disasters (e.g. earthquake, tsunami, volcano, landslide), and meteorological disasters (e.g. rain, flooding, hail, hurricane, tornado, snow), and human-induced disasters, both intentional and non-intentional

3. Plan Office: office developing the Disaster and Business Recovery Plan

4. Partner Office: an office or firm located remotely enough from the Plan Office (ex. in another state, region and/or country) that could assume the Plan Office’s essential functions in the event that the Plan Office and its practitioners are incapable of continuing the Plan Office’s essential functions

5. Critical Deadline: deadline where failure to meet a time limit is not extendable or excused

6. Emergency Management Group (EMG): group of people in charge of making decisions in the event of an emergency that disrupts the Plan Office’s activities

7. Emergency Management Group Leader: the individual leading the Emergency Management Group

8. Department Representative: an individual serving on the EMG and responsible for preparing his/her group for an emergency and executing the DBRP for the department in the event of such emergency

9. Alternate Office: a location where the responsibilities of the Plan Office will be carried out following a disaster impacting the functioning of the Plan Office. An Alternate Office may be a relocation of the Plan Office, a second location of the same organization or a Partner Office.
Chapter 2: Development of a Disaster and Business Recovery Plan

2.1 General:

Preparedness assessment

Before developing a DBRP, it is necessary to assess the Plan Office’s current disaster preparedness level. In order to do this, determine if the office has the following:

- Office and/or building evacuation plan.
- Adequate protection of critical documents and records (e.g. original certificates, agreements, current docket, etc.) and off-site duplication of the same.
- Easily accessible and current list (both print and electronic) of contact information (e.g. phone numbers, emails, etc.) for the following: employees, clients, and vendors (including a list of foreign counsel(s)). Be sure to update this list on a regular basis to keep information current.
- A plan on how to inform the Plan Office’s clients, vendors, courts, opposing counselors, etc. of an actual emergency situation.
- A Partner Office located remotely enough from the Plan Office with the ability to assume the Plan Office’s essential functions in the event that the Plan Office and its practitioners are incapable of continuing the Plan Office’s essential functions.
- The ability to access records remotely (from outside the Plan Office).
- An established alternate location.
- The ability to produce a list of critical deadlines that must be met regardless of a practitioner’s ability to access the Plan Office.
- A matter number for tracking expenses related to management and disaster recovery (helpful for insurance purposes).

2.2 Development of a Disaster and Business Recovery Plan (DBRP):

Once the Plan Office’s pre-existing level of preparedness has been determined, a DBRP can be developed using the following suggested steps:

1. Establishment of an Emergency Management Group (EMG)
   - Purpose:
     § To identify the team in charge of making decisions in the event of an emergency that disrupts the Plan Office’s activities.
EMG Members:

§ The EMG should include:

i. An EMG Leader and at least one alternate.

ii. A Department Representative (DR) of each department and at least one alternate.

Responsibilities and Roles of EMG Members:

§ General:

i. Assign responsibilities among EMG members according to their capacity and ability to handle emergency situations.

ii. Establish a protocol for determining who will assume the EMG Leader role in an actual situation.

§ Please refer to Chapter 6 for EMG Leader's and DR's responsibilities pre- and post-emergency.

Once the EMG is established, its members should determine the office's essential functions and processes (see below).

2. Identification of the Plan Office’s essential functions and processes

   • Purpose:

   § To identify the Plan Office’s functions and processes that are critical for carrying out the Plan Office’s objectives and that must continue during and after a disaster or emergency.

   • Steps:

   § The DR:

   i. Identifies the essential functions and processes for his/her department.

   ii. Prioritizes these functions and processes.

   iii. Identifies the personnel, technology, and equipment necessary to continue these functions and processes.

      a. For example:

         - Critical client information,

         - Hardware,
iv. Identifies Critical Deadlines.

§ The EMG Leader:

i. Gathers the information provided by the Department Representative(s).

3. Designation of an alternate location for the temporary relocation of the Plan Office

   General:

   § The DBRP should include alternate locations to which each office can be relocated if access to the Plan Office is impossible for more than 24 hours or the conditions make it impossible to continue daily activities at the Plan Office.

   Things to take into consideration when choosing an Alternate Office:

   § Determine if the equipment and technology necessary to continue the Plan Office’s functions and processes are available at the Alternate Office.

      i. For example: internet connectivity, phones, office equipment, and access to mail/couriers, work stations, and computers.

   § Determine if the Alternate Office provides remote file accessibility.

   § Determine if the alternate location has accessibility to lodging, food, and other basic needs to accommodate relocated personnel.

      i. Have financial considerations been pre-addressed (rent, expense tracking, etc.)?

   § Based on the type of emergency, determine the following:

      i. How long might the interruption impact the Plan Office?

         a. If the disruption will be temporary (i.e. 1-4 days), determine if it is more practical and feasible for practitioners to work individually and remotely rather than relocating to Alternate Office.

      ii. Are there limits to the length of time the Alternate Office can be occupied?

         a. Can the office remain at the alternate location for an unlimited amount of time (e.g. permanent relocation)?
iii. How many of the displaced personnel will be relocated to the alternate location? Specify by name as able.

- Options for alternate location:

  § Multi-office firm

  i. A firm with multiple offices has the advantage of having already available offices to which to relocate.

  ii. If relocation to the Alternate Office is chosen, the following items should be considered:

     a. Capacity of Alternate Office’s personnel to handle the responsibilities and workloads of the Plan Office. For example, in a case of major disaster, Plan Office personnel will likely not have the time or ability to handle work-related matters in the interest of taking care of personal/family needs. Accessibility of the Plan Office’s docket information and files by remotely-located colleagues is imperative.

  § Single Office Law Firm or Solo Practitioner

  i. A single office law firm or a solo practitioner does not have the advantage of having a readily-available alternate location. Therefore, the following should be taken in consideration when choosing an alternate location:

     a. Localized damage

        - When the Plan Office itself was the only affected one (e.g. a fire), the practitioner(s) may choose to work remotely from his/her residence or another safe location rather than relocating to an alternate location.

        - For that reason, it is imperative for the solo practitioner or the single office law firm to have the ability to remotely access its database, docket, records, forms, accounts, etc.

     b. Widespread damage

        - When not only the Plan Office was affected, but also the entire area or region in which the Plan Office is located, the solo practitioner or the single office law firm should pre-establish a system to deal with its responsibilities and minimize the business interruption.
- For example, the Plan Office may establish a relationship with a Partner Office to assume the Plan Office’s essential functions.

- Please refer to Chapter 7 for a detailed explanation of the Partner Office’s role.

· When to decide to relocate (foreseeable event):

  § While some disasters are unpredictable as to time and place (e.g. earthquakes, tsunamis, fires), the Plan Office may have some degree of advanced warning in other situations (e.g. hurricanes, snow storms).

  § In cases where the disaster is foreseeable, the EMG Leader should inform the personnel at the Partner Office about the situation and give them detailed instructions on what to do in case of a disaster.

  § These instructions may include:

    i. Contact information of:

       a. Clients

       b. Vendors

       c. Foreign associates

       d. Out-of-region opposing counselors

       e. Critical Deadlines

· A timeline of the steps to follow. For example, how long to wait before implementing the DBRP, when to contact the clients, etc.
Chapter 3: Documentation and Maintenance of the Disaster and Business Recovery Plan

3.1 General:

The success of a Disaster and Business Recovery Plan (DBRP) depends not only on the development of the plan, but also in the testing, training of personnel, and maintenance of the plan.

1.2 Documentation:

Once the DBRP is developed, the Plan Office should follow these next steps:

1. Provide training to EMG Members in disaster recovery and emergency management.
2. Inform the personnel about the plan, how to access the DBRP under all circumstances, etc.
3. Keep a copy of the DBRP off-site.
4. Have copies of the DBRP that are easily accessible.

1.3. Maintenance of the DBRP:

General:

1. The Plan Office EMG should review its DBRP at least once a year.
2. Decide whether or not to establish an audit trail which highlights changes made to the DBRP.
3. Changes in the operation of the office, such as change in personnel, opening of another office, etc., should be recorded and integrated into the DBRP.
4. A simulation exercise should be scheduled at least every twenty-four (24) months.

3.4 Performing a Simulation Exercise (Optional)

If time and resources permit:

1. Suggestion: An independent observer should document the simulation exercise noting all results, including, but not limited to, discrepancies, exposures, action items, and individual responses.
   - NOTE: The independent observer may be an employee from another office or someone who has a minor role in the execution of the DBRP.
2. Analyze the results of the simulation exercise.
   - Determine if the DBRP simulation exercise met the acceptable recovery time objective set by management.
3. Publish a simulation report within a reasonable time (typically three weeks) after the completion of the simulation exercise.

4. Make modifications to the DBRP as necessary.
   - Address any deficiencies identified by the simulation exercise
   - Replace ALL prior versions of the DBRP.
Chapter 4: Activation of the Disaster and Business Recovery Plan

4.1 General:

Once an event has occurred or threatens to interrupt the Plan Office’s activities and accessibility for more than 24 hours, the DBRP is activated.

4.2 Assessment of the situation:

The Emergency Management Group should analyze the situation and determine if the DBRP should be activated.

The DBRP should be activated if for a period of more than 24 hours:

1. The Plan Office’s activities and operations will be interrupted.
2. It is expected for a minor emergency to significantly worsen and interrupt the Plan Office’s activities and operations.
3. The Plan Office is inaccessible.
4. An imminent danger (e.g. hurricane, snow storm) is foreseeable and would likely cause the interruption of the Plan Office’s activities and operations and/or limit accessibility to the office.

4.3 Activation of the DBRP:

Once the DBRP is activated, every member of the Emergency Management Group assumes his/her responsibilities. Please refer to Chapter 6 for a detailed explanation of the EMG’s responsibilities.

EMG Leader:

1. Assesses the damage.
2. Takes inventory of damaged or destroyed property.
3. Takes pictures of the damage.
4. Determines what immediate action is necessary to minimize further damage.
5. Contacts the appropriate agencies or departments (e.g. utilities, insurance, etc.)
6. Determines if relocation to an Alternate Office location is necessary.
7. Determines if the Partner Office should assume the Plan Office’s critical operations and obligations.
8. Determines when clients and vendors should be contacted.
Other EMG members/Department Representatives should:

1. Account for and contact members of his/her department.
2. Upon instruction of the EMG Leader, he/she should contact the clients from his/her department.
3. Ensure that his/her department’s critical operations and obligations can be carried out by the Plan Office, at an Alternate Office, or by a Partner Office.
4. Identify all Critical Deadlines and determine how they will be met or extended.

4.4. Relocation to an Alternate Office location:

Once it is determined that an Alternate Office location should be established, assigned members of the EMG should:

1. Contact vendors and mail service and provide them with the Alternate Office location information.
2. Post a prominent sign at the former location with Alternate Office information.
3. Post new contact information on webpage.
4. Forward phone calls to Alternate Office location or, if possible, implement an updated message on the Plan Office phone system.
5. E-mail clients with updated contact information.
6. Set an automatic response e-mail.
7. Make sure all aspects of physical and logical security at the Alternate Office conform to the Plan Office’s current security procedures.
8. Determine which Plan Office personnel will relocate to the Alternate Office.

In the case where the Plan Office and its practitioners are incapable of continuing the Plan Office’s essential functions, the Partner Office should assume the above-mentioned steps on behalf of the Plan Office EMG.
Chapter 5: Restoration of the Office’s Normal Activities and Operations

5.1 General:

The Emergency Management Group should assess the original office location and determine if it is suitable to resume normal activities and operations.

5.2 Restoration of Plan Office’s normal activities and operations:

Resumption of normal activities and operations may take place at the original facility if it is safe and accessible. The following is suggested:

1. The EMG assesses the status of the original facility.
2. If the original facility is safe and accessible, then the EMG establishes a timeline for the return of the Plan Office’s operations to the original facility.
3. Critical operations and functions should be last to return to the original facility.
4. If the Partner Office has been handling the Plan Office’s critical operations, then schedule a meeting to plan a smooth transition back to the original office.
5. Keep clients and vendors updated on the location of the Plan Office.
Chapter 6: Emergency Management Group

6.1 General:

The Emergency Management Group (EMG) is in charge of making decisions in the event of an emergency that disrupts the Plan Office’s activities.

6.2 EMG Members:

The EMG consists of:

1. An EMG leader and at least one alternate.
2. A Department Representative (DR) of each department and at least one alternate.

6.3 EMG Leader Responsibilities:

6.3.1 Pre-emergency:

1. Determine when and if the DBRP should be activated.
2. Determine if the Plan Office should be relocated to the Alternate Office location in preparation of a foreseeable disaster.
3. If appropriate, contact the Partner Office to inform them of the possible emergency situation.
4. Establish a protocol for Partner Office employees to notify the Plan Office and receive updates.

6.3.2 Post-emergency:

1. Assess the damage caused to the Plan Office.
   - Takes photos of the damage.
   - Determines immediate steps required to minimize further damage.
   
   § For example:
   
   i. Secures the facility.
   ii. Salvages records (physical and electronic) from further damage or destroys irreparable records.
   iii. Initiates and coordinates clean-up efforts, if and when appropriate.
   iv. Transfers records to a different area.
   - Inventories destroyed or damaged property.
2. If appropriate, the EMG Leader should contact the appropriate agencies and/or departments. These include, but are not limited to:

- Public Utilities (electric, gas, water)
- Telephone and Internet Carrier
- Government agencies (e.g. State Emergency Management Agency, State Office of Emergency Services, Federal Emergency Management Agency, Department of Health and Human Services, etc.)
- Fire Department
- Police Department
- Postal Service
- Building Management
- Vendors

3. Contact the Partner Office in charge of taking over the Plan Office’s essential functions and gives them instructions on how to proceed.

4. Determine if Plan Office personnel should work (a) individually and remotely, (b) from a compromised Plan Office, or (c) relocate to an Alternate Office location.

5. Determine if the Plan Office should relocate to the alternate location.
   - Determines which personnel should relocate to the alternate location.
   - Determines if the relocation is permissive or mandatory.

6. Determine the manner and frequency for providing updates concerning the status of operations at the Plan Office to necessary parties.

7. Determine where to make information available for employees when conventional means of communication are not accessible (suggestions include: Partner Office.

8. Determine when restoration of the Plan Office’s normal activities and operations should take place.

1.4 Department Representatives’ (DR) Responsibilities:

1.4.2 Pre-emergency:

1. Determine the best method to backup and store data required to support the department’s functions.

2. Confirm communication methods with EMG Leader and Plan Office personnel.
1.1.2 Post-emergency:

1. Communicate with EMG Leader to receive instructions and inform that he/she is able to serve as Department Representative.

2. Account for department members.
   - For situations occurring during office hours, the DR accounts for department members known to have been in the office.
   - For situations occurring while the office was closed, the DR should attempt to account for department members by contacting them via any available means.

3. The DR should maintain and have access (both from office and home) to a list with the contact information of every office employee. Focus equally on all members of the organization. Do not assume that some members have better or greater access to assistance than others.
   - The information should include:
     - Home phone number
     - Cell phone number
     - Home address
     - Personal e-mail address (if available)
     - Close relatives’ contact information

4. Determine the best approach to contact clients from his/her department.
   - Example: by e-mail, by phone, posting information to a remote server.
   - Inform the clients about:
     - The incident (when, where, what, and degree of damage)
     - Impact on the Plan Office’s operations
     - Provide contact information and address of the Alternate Office location
   - Establish a process for review and dissemination of information with sensitivity to issues of confidentiality and public relations.

5. Contact opposing counselors and/or courts to postpone/reschedule meetings, hearings, depositions, etc., as necessary.
Chapter 7: Partner Office

7.1 General:

A Partner Office is an office or firm located remotely enough from the Plan Office (ex. in another state, province, region and/or country) that could assume the Plan Office’s essential functions in the event that the Plan Office and its practitioners are incapable of continuing the Plan Office’s essential functions.

The purpose of having a Partner Office is to make possible for the legal department, law firm, or solo practitioner to meet its legal obligations regardless of the magnitude of the disaster; even in cases where all records are destroyed, power service, e-mail, cell phone, and telephone services are not available or access to the Plan Office will not be possible for an extended period.

7.2 Partner Office’s Role:

The Plan Office and the Partner Office should establish a protocol in the event the Plan Office cannot meet its essential responsibilities during an emergency situation. The following steps are suggested:

1. If no communication has been established within two days of the disaster, the Partner Office should:
   - Access the Plan Office’s docket of critical dates to determine matters with imminent deadlines.
   - Attempt to contact only the Plan Office’s clients having matters with imminent deadlines. Consider a liaison between Plan Office’s client and the matter’s foreign counsel or a limited Power of Attorney to act on a one-time basis if possible.
   - Inform foreign counselors of the Plan Office’s DBRP as needed.

   § Each Plan Office should inform its foreign associate firms of the DBRP and explain the role of the Partner Office in case of an emergency. Establish standing instructions to be used if and when the Plan Office DBRP is activated, so that the associate firm will use its best efforts and extend or attend to Plan Office deadlines until further notice.
DISASTER AND BUSINESS RECOVERY PLAN

**Phase I: Development of DBRP**

Steps:

1. Establish an Emergency Management Group (EMG).
2. Identify the Office’s essential functions and procedures.
3. Designate an alternate site to temporary relocate the Office.
4. Establish a relationship with an outside firm or practice to handle the office’s critical obligations in a worst case scenario.
5. Establish a plan to restore the Office’s normal activities and functions.
6. Identify situations under which the DBRP would be activated.

**Phase II: Documentation and Implementation of DBRP**

Steps:

1. Train EMG members in disaster recovery and emergency management.
2. Inform staff about the DBRP.
3. Provide copies of the DBRP to the staff.
4. Perform a simulation exercise.
5. Analyze the results of the simulation exercise.
6. Modify the DBRP as necessary.

**Phase III: Maintenance of DBRP**

Steps:

1. Revise DBRP at least once a year.
2. Establish audit trail with changes made to the DBRP.
3. Perform a simulation exercise at least once every 24 months.
DISASTER AND BUSINESS RECOVERY PLAN

Phase IV: Activation of the DBRP

Steps:

1. Emergency Management Group (EMG) assesses the situation.

2. EMG decides to activate the DBRP.

3. EMG decides if relocation to alternate location is needed.

4. If relocation is needed, then all employees, clients, vendors, foreign counselors, etc. should be informed of the decision.

5. New location and contact information is made public.

Phase V: Restoration of Office’s Normal Activities

Steps:

6. EMG assesses the status of the original facility.

7. If the original facility is safe and accessible, then the EMG establishes a timeline for the return of the office’s operations to the original facility.

8. Critical operations and functions should be last to return to the original facility.