



# IN BRIEF

MALPRACTICE AVOIDANCE NEWSLETTER FOR OREGON LAWYERS

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## PROTECTING YOUR FIRM

The tragic events of September 11 remind us that we are vulnerable to disaster, natural and otherwise. Fires, floods, wind storms, ice storms, landslides, and earthquakes have all occurred in recent memory – and will occur again. Oregon lawyers have been victims of arson and theft. Although it is easy to think that nothing will happen to you, we owe it to ourselves, our employees, and our clients to prepare for emergencies.

This article offers a comprehensive approach to preparing for an emergency. Conform the suggestions to fit your office and your resources. Small firms and sole practitioners should, at a minimum, conduct a safety check and take some precautions, such as storing computer backups and duplicate client lists off site and keeping files in secure, fireproof cabinets. Larger offices need to follow these steps and many more. A list of resources is included as a sidebar to this article.

## MANAGING AND PROTECTING INFORMATION

You can protect your office files, records, computer data, and equipment by taking these precautions:

**Put files and records away.** Files should be kept off desks, chairs, floors, and windowsills and placed back in fire-resistant file cabinets at the end of each work day. Anything left out could be lost forever to fire, smoke, or water damage. If you must keep irreplaceable documents, such as client originals, keep them in a fireproof safe stored off the floor to minimize potential water damage. If you keep photographs and negatives, store them separately. Negatives should be kept in the safe.

**Keep active case files up to date and well organized.** This will help you get to necessary information when time and resources are limited and stress is high. Follow proper file-closing procedures, such as returning all client originals and arranging for appropriate storage. File retention guidelines and a file-closing checklist are available from the PLF at [www.osbplf.org](http://www.osbplf.org). Click on Loss Prevention Material, then Practice Aids and Forms.

**Back up your computer data.** How much information can you afford to lose? Answer this question and you will get an idea of how often you need to back up. Take into consideration how much information you create each day. Some people back up on an hourly basis – or even more frequently if it is a particularly difficult project. Most law offices should, at a minimum, back up on a daily basis.

Store your backups at two different locations. Rotate where you store them – for example, store the backup off site on Mondays and Wednesdays and on site on Tuesdays, Thursdays, and Fridays. The on-site backup should be stored in your office safe. The off-site backup can be stored at home or another appropriate location away from the office. Both backups should capture word processing documents *and* your conflict database, docket, client billing, and other key records. Software applications should also be backed up periodically and a copy or the original disk and CDs stored off site.

If your backup program generates a log, check it faithfully. Even if no errors are reported, you should test your backups regularly by attempting to restore a file. Don't let a disaster be the time when you discover that your backups are not working properly. Train staff in how to back up and restore files and document these procedures.

### DISCLAIMER

This newsletter includes claim prevention techniques that are designed to minimize the likelihood of being sued for legal malpractice. The material presented does not establish, report, or create the standard of care for attorneys. The articles do not represent a complete analysis of the topics presented and readers should conduct their own appropriate legal research.

**Protect your equipment.** Use surge protection and/or uninterrupted power supplies (battery backups) for critical equipment such as network servers, computers, and phone systems.

**Keep hard copies of critical information off site.** These should include:

- A list of law office contacts that can be accessed in an emergency. Such a list could include computer or voice mail passwords; safe deposit or storage unit location; name, address, and telephone number of the attorney's property manager, accountant, insurers, and banking institution. Documenting this and other contact information can be vitally important when the lawyer is unable to communicate. It can also be a valuable reference for the lawyer. The Professional Liability Fund publication, *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death*, contains a sample list of law office contacts. Copies of your contact list should be stored both on and off site.
- An up-to-date list of home addresses, telephone numbers, fax numbers, cell numbers, beeper numbers, and emergency contact information for each member of your office. Larger firms should identify key personnel to keep copies of this information at home at all times. Personnel who keep this information at home should have the ability to program their voice mail or an answering machine so that – in the event of an emergency – employees returning calls can receive up-to-date messages.
- Your active client list, docket, and a list of your accounts receivable. These lists should be replaced at least monthly.
- Your partnership agreement, lease, sublease, insurance information, inventory of assets, and other important administrative documents.
- A record of the settings you use for your computer hardware and software. Keep these settings organized in a log, and when programs are added, adjustments made, or settings changed, make a new entry. This is critically important for setting up new

computers if the old ones are destroyed or for reconfiguring existing systems. Follow the same procedures for telephone systems.

## MANAGING AND PROTECTING PEOPLE

Make office safety a priority by appointing a safety coordinator who can devote time to creating or improving office safety procedures.

**Conduct an initial risk assessment.** All offices should have fire extinguishers, smoke detectors, and sprinkler systems. Appropriate locks, lighting, and alarm systems should be considered to discourage break-ins. Review office equipment and furniture for sources of possible earthquake damage. To minimize damage, bolt bookcases to the wall and be sure that filing cabinets have secure latches.

**Establish a safety committee.** Divide up responsibilities for key areas, such as stocking emergency supplies, ensuring personnel safety, protecting documents and records, protecting computer equipment and data, submitting insurance claims, and contacting clients in case of an emergency. (In a smaller office, these responsibilities will likely fall on the shoulders of one person.) Larger offices may need to take such steps as assigning a safety monitor for each floor or establishing a succession plan for key partners and administrative staff.

**Conduct regular safety inspections.** Look for potential hazards such as overloaded electrical outlets, improper use of extension cords, or blocked exits and stairways. Verify that exits and escape routes are clearly marked and fire extinguishers are easily accessible. If you are a sole practitioner, walk around your office area and look for these hazards. On a daily basis, turn all appliances off when leaving the office and close office doors to prevent potential fires from spreading.

**Establish emergency evacuation and emergency shutdown procedures.** These procedures should be required reading for existing employees, incorporated into new employee orientation, and reviewed annually.

If you are a tenant, review emergency procedures for your building. It may make sense to coordinate emergency plans with other tenants on your floor or adjacent floors. Take the time to become familiar with your building's alarm and other

safety systems. These systems should be tested on a regular basis. Contact building management if you are uncertain whether testing is being conducted.

**Stock emergency supplies.** Be sure to have flashlights, radios, cell phones, extra batteries for both, water, nonperishable food, blankets, extra toilet tissue, first aid supplies, and fire extinguishers. Your local fire department and Red Cross can provide additional guidance on fire safety and emergency preparedness.

#### **Educate employees.**

- Offer First Aid and CPR courses. These and other safety training courses are invaluable, especially when phone lines are down or emergency service personnel are overwhelmed. If you are a sole practitioner, this training may help you save your own life. If you are in a larger office, encourage an appropriate number of lawyers and staff to obtain this training so they can help themselves or assist others if needed.
- Encourage employees to keep important personal items, such as car keys, house keys, wallets, and purses with them even when running a short errand or going to the courthouse “across the street.” (If an emergency prevents them from reentering the office, at least they won’t be locked out of their car or home.)
- Train employees who travel frequently to (1) carry a fully charged cell phone, flashlight, radio, extra batteries, first aid kit, and other items that may be helpful in case of an emergency; (2) review the hotel’s fire instructions and fire exits; (3) keep valuables, client files, and a change of clothes readily accessible; and (4) respond to all building fire and emergency signals.

#### **Inventory and Appraise Your Office Contents.**

An accurate record of your office contents will help to make the insurance claim process go smoothly. Appraise artwork. Inventory equipment, law libraries, software, and other items of value. Consider videotaping or photographing your office interior as part of this process. Review your inventory and appraisals annually. Store a copy off-site, at your home or some other appropriate location. Caution lawyers and staff to inventory or

document personal items kept at the office.

### **OTHER IMPORTANT STEPS TO TAKE**

**Arrange for an alternate work site in case of an emergency.** After a wide-scale disaster in a downtown setting, office space may be scarce for larger firms. Disaster preparedness for these offices includes scouting for alternate work sites now. Look into available space in your existing office building. Assuming your location is accessible and safe to occupy following an emergency, remaining in it is your best option. As a backup, contact a real estate broker or agent to discuss your options for other contingency work space.

**Purchase adequate insurance coverage.** Adequate insurance coverage is an absolute must for every office. Contact your broker for a comprehensive quote on *all* your needs. If you are practicing out of your home, review your renter’s or

## **WEB RESOURCES FOR DISASTER PREVENTION AND RECOVERY**

**The Red Cross at [www.redcross.org](http://www.redcross.org).**

**The American Bar Association Division for Bar Services.** Visit [www.abanet.org/barserv/disaster/](http://www.abanet.org/barserv/disaster/). Click on *Firms in Crisis: Practice Management Resources*.

**The Association for Information Management Professionals.** Visit [www.ama.org/bookstore](http://www.ama.org/bookstore) for resources to purchase. Free resource materials to help organizations recover business records and information can be downloaded from [www.ama.org](http://www.ama.org).

**The Northeast Document Conservation Center (NEDCC) at [www.nedcc.org](http://www.nedcc.org).** Click on disaster assistance. Information provided includes advice on drying wet collections and dealing with damage from fire, pests, or mold. NEDCC staff are available 24 hours a day to provide telephone advice (978- 470-1010) if a disaster occurs.

**The Association of Legal Administrators (ALA).** Visit [www.alanet.org/periodicals/disaster\\_index.html](http://www.alanet.org/periodicals/disaster_index.html).

**The Federal Emergency Management Agency.** Visit <http://www.fema.gov/>.

**The State of Oregon Emergency Management Division.** Visit [www.osp.state.or.us/oem/oem.htm](http://www.osp.state.or.us/oem/oem.htm).

homeowner's policy. All lawyers should familiarize themselves with these types of insurance coverage:

- Business Interruption – covers the loss of income caused by the interruption of an ongoing business as a result of a disaster or other risk included under the policy.
- Valuable Papers – provides replacement for loss, damage, or destruction of valuable papers such as client and office records.
- Crime Insurance – helps protect against loss from burglary, robbery, and employee dishonesty.
- Disability insurance, life insurance, and other personal coverage.
- Coverage for damage incurred as the result of fire, earthquake, or other specified events.

In evaluating the adequacy of your coverage, ask these questions:

- Are office furnishings and equipment insured at *replacement* value?
- Does your policy cover the cost of *cleaning and restoring* office furnishings and equipment?
- Does your policy cover the cost of *cleaning* books and files?
- Does your business interruption coverage include *payment of rent at a temporary location* if needed?
- Does your policy cover *sprinkler or water damage*?
- If you are a member of a firm, will your *homeowner's insurance cover loss of personal items* kept in your office?

If you own your own building, or are a member of a firm that owns real property, additional insurance considerations will apply.

**Create a back-up plan to meet financial obligations.** Establish a plan for paying bills, meeting payroll, and taking care of other financial responsibilities that will continue despite a disaster. Simple steps such as keeping some blank checks off site or establishing a line of credit now (that you can draw upon later) may help. Maintain a good relationship with your banker in case you need an

emergency loan for payroll or repairs, and check with your insurance broker or agent to determine the nature and availability of assistance under applicable insurance policies.

**Establish an alternate system for key tasks.**

Establish an alternate system for important tasks, such as billing, in case you don't have access to your computer. Store materials for these redundant manual systems off-site. For example, if your alternate system for billing is to keep manual time sheets (in lieu of making entries into a time and billing program) keep the materials you need at an off-site location.

If disaster does strike, call the Professional Liability Fund as soon as possible. We have many resources that can help you, including a checklist for what steps to take and three practice management advisors who have helped lawyers after floods, fires, earthquakes, and other office disruptions.

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