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*Surviving a Disaster: A Lawyer's Guide to
Disaster Planning*

Prepared for the ABA Special Committee on Disaster Response and Preparedness by BDA Global,
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FOREWORD

Over a year ago I identified disaster response and preparedness as an important theme for my year as ABA President. Then the horrible earthquake and tsunami in Japan struck, followed by the devastating tornados in Tuscaloosa and Joplin, and the record breaking Mississippi River flooding and Arizona forest fires. While I like to think of myself as prescient, I claim no special powers here. Disasters abound, are a fact of life, and will occur whether caused by nature or by human error or malicious actions.

While disasters such as those above capture the headlines, even a minor disaster --a burst pipe in the room with the computer server – can harm a law firm and disrupt its business. Thus even if you believe that you live where cataclysmic events don't occur, all lawyers and law firms are at risk of a disaster disrupting their practice. There are no "disaster free" zones.

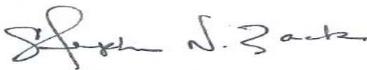
Fortunately, with proper planning, the harm they cause can be mitigated, clients may be served, and law practices may be preserved. Disaster planning is especially important for lawyers. Not only is it necessary to protect, preserve, and in extreme cases rebuild one's practice or firm, lawyers also have special obligations to their clients. Lawyers must represent the client competently and diligently, safeguard client's property, and maintain client confidentiality and communications. These obligations are neither excused nor waived following a disaster. While the Model Rules of Professional Conduct do not specifically address this obligation, a small body of post-Katrina literature suggests that failure on the part of a lawyer to prepare for disasters could lead to violations of these rules, or even expose the lawyer to civil liability for failure to protect property and interests. As noted by two authors writing for an ABA Center for Professional Responsibility publication,

After Katrina, lawyers nationwide should consider the ethical implications of their approach towards preparing for a potential disaster. While the Model Rules of Professional Conduct do not delineate every scenario that could give rise to an ethical violation, the text of these rules are written in broad, general terms, under which certain actions or inactions of a lawyer in preparing for a disaster could constitute ethical violation in the jurisdictions adopting.

To help lawyers and firms prepare for disasters, the ABA Special Committee on Disaster Response and Preparedness has developed this guide. While disaster planning can be daunting, this guide provides a step by step approach that even a solo or small firm can undertake. Additionally, the Committee has made other resources available and these may be found on its website at www.americanbar.org/disaster.

I urge all lawyers and firms to develop a disaster (Business Continuity) plan, test it, and keep it current. And then I hope you will never need to use it.

Sincerely,



Stephen N. Zack

Chapter 1.0 - Overview of Business Continuity Planning

1.1 Why Develop a Business Continuity Plan (BCP)

As of May 2011, approximately 1000 tornadoes had touched down in the United States, claiming over 500 lives,¹ while forest fires in Arizona had displaced hundreds of thousands and burned over 469,000 acres by June of the same year.² These record-breaking phenomena are but two of the many disasters that have led FEMA to issue 8 emergency, 46 major disaster, and 71 fire management assistance declarations by the start of the 2011 hurricane season.³ In the previous year, FEMA declared 81 disasters throughout the United States.⁴ With the increased severity and frequency, and decreased predictability of such natural and man-made disasters, and even the possibility of every day disruptions (ex. power failures, localized flooding), it is important for businesses to be resilient.

A Business Continuity Plan is a written document that describes how your firm intends to continue carrying out critical business processes in the event of a disaster. It typically includes provisions for assessing the status of employees, workspaces, and resources, defining steps to recover essential business processes, and establishing procedures to return to normal business operations.

This guide will assist your firm in creating and implementing a Business Continuity Plan. It will introduce you to a number of key components of any continuity plan, and walk you through processes, which will allow your firm to identify and prioritize critical business functions, and recognize and mitigate certain risks to these functions.

It is important to note that business continuity plans do not have to be uniform. Rather, this guide is to be used as a tool to assist your firm in tailoring a BCP to suit its particular needs.

¹ Reuters, *2011 Tornado Death Toll Tops 500 and Season Not Over*, <http://www.reuters.com/article/2011/05/26/us-weather-tornadoes-records-idUSTRE74P77Z20110526> (May 6, 2011)

² New York Times, *Forest Fires – Arizona 2011 (Wallow Fire)*.

http://topics.nytimes.com/top/news/science/topics/forest_and_brush_fires/index.html (June 28, 2011)

³ Department of Homeland Security, Federal Emergency Management Agency (FEMA), *2011 Federal Disaster Declarations*, <http://www.fema.gov/news/disasters.fema?year=2011> (last updated June 24, 2011).

⁴ Department of Homeland Security, Federal Emergency Management Agency (FEMA), *2010 Federal Disaster Declarations*, <http://www.fema.gov/news/disasters.fema?year=2010> (last updated June 24, 2011).

1.2 The Overall Approach to Business Continuity Planning

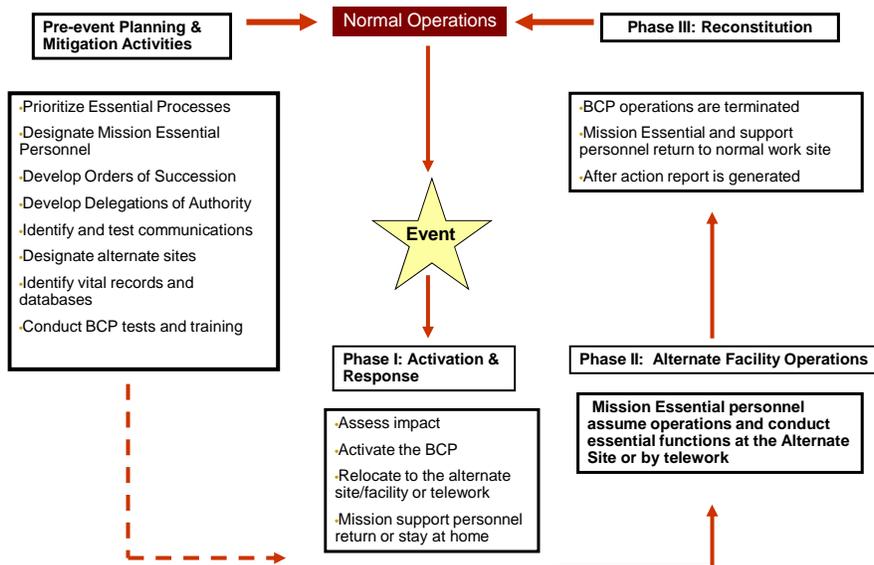
The Business Continuity Plan is a living document that should be structured with checklists and step-by-step instructions to ensure that it lends itself to action at the time of plan activation.

There are three main phases of the BCP:

- 1) Activation and Response
- 2) Alternate Facility Operations
- 3) Reconstitution

The following graphic highlights the overall approach recommended for Business Continuity Plan development, activation, and maintenance:

Exhibit 1 – Overall Planning Approach



1.3 Components of a Business Continuity Plan

There exist, today, many standards, which provide guidance in creating a Business Continuity Plan, including those adopted by the Department of Homeland Security as part of its Voluntary Private Sector Preparedness Accreditation and Certification Program (PS-Prep). Most if not all of these standards suggest that the following elements are essential for a viable continuity plan:

- 1) Essential Functions and Processes;
- 2) Order of Succession;
- 3) Delegation of Authority;
- 4) Alternate Facilities;
- 5) Continuity Communications;

- 6) Vital Records Management;
- 7) Human Capital;
- 8) Devolution of Control;
- 9) Test, Training & Exercise;
- 10) Reconstitution.

In addition, it is recommended that your firm conduct a Business Impact Analysis and a Risk Assessment. Each of these processes, along with the components listed above, will be discussed in greater detail in Section 3.

1.4 Preparedness Checklist

The following questions will guide you as you move towards emergency preparedness:

1. Are you familiar with your office evacuation plan?
2. Do you know where your office exit routes, stairways, fire extinguishers, and medical kits are located?
3. Do you have a muster point identified for personnel to meet after an emergency event?
4. Do you have a list of important phone numbers identified for reaching your employees, clients, and vendors after a disruption?
5. Do you have a list of important emergency numbers quickly accessible in printed and electronic format?
6. Do you have a general strategy in place for notifying the media and stakeholders about an ongoing event and its implications?
7. Do you have the ability to access critical client records remotely?
8. Have you prioritized your firm's functions by criticality?
9. Do you have a "go kit" of office items you would need if you were unable to access your primary office?
10. Have you pre-positioned technology equipment offsite to ensure adequate processing capability?
11. Are you confident in your redundancies and controls to protect/recover client data in the event of critical technology failures?
12. Have you tested mechanisms to access critical records remotely and to work remotely after disruptions?

Chapter 2.0 – Phases of a Business Continuity Plan

2.1 Pre-Event Preparedness

Your law firm's business continuity strategy should be focused on how it will respond to a disruptive event. Prior to activating your Business Continuity Plan, it is important that you prepare for such an event. This readiness and preparedness includes not only developing the Plan, but also testing it, training personnel with continuity roles and responsibilities, and exercising both plan and personnel on a regular basis. During this preparation, an Emergency Management Team (EMT) may be established.

2.1.1 Emergency Management Structure

It is first important to build an Emergency Management Team (EMT)⁵ that is appropriate for the size and structure of your law firm/office. The goal is to ensure that you have the ability to make timely decisions and to use a structured approach in dealing with disruptive events. The EMT is most often comprised of an Emergency Team Leader (usually a senior partner) and team members representing each department of the company. For the solo practitioner, the EMT could consist of you and any support personnel, on the one hand. On the other hand, it may not be feasible or necessary to create an EMT, particularly in instances where you have no support personnel. A firm would identify an EMT Leader and his alternate, along with a team of individuals with functional knowledge of each of the processes identified in the Business Impact Analysis, to lead in the implementation of the plan. Each member of the team should have an alternate, someone who will be able to carry out the respective continuity responsibilities should the team member be deemed unavailable or unwilling to do so. The main objective here is to assign roles and responsibilities to those most equipped to handle them in an emergency situation.

2.2 Activation and Relocation

Once an event occurs which threatens accessibility to your main facility for more than 24 hours,⁶ then the activation and relocation phase of business continuity planning commences. A number of steps should be taken during this phase:

- 1) The Emergency Management Team should analyze the situation, determine the *Level*

⁵ Depending on the size of the firm or law office, the creation of an Emergency Management Team will seem neither feasible nor possible. In these instances, the role of the EMT will be carried out by a Practitioner.

⁶ The BCP is intended to be activated only if the original office is rendered inaccessible for more than 24 hours. An Occupant Emergency Plan or the like should be utilized with regards to the immediate evacuation of the facility (ex. in the case of a fire) or a shelter-in-place situation (ex. hazardous weather during which all are encouraged to remain indoors). Very often in the case of a small firm or solo practitioner, the management for the building in which your office is housed will provide such a plan for you.

- of Disruption* and decide whether the Business Continuity Plan should be activated;
- 2) All personnel should be accounted for;
 - 3) Personnel should be notified of the status of the company, and the activation of the plan.
 - 4) If it is deemed necessary by the Emergency Management Team (EMT), the firm should relocate to the alternate facility. In order to make this determination, the EMT makes an assessment of the original facility.

2.2.1 Levels of Disruption

Level One (1) (Minor Emergency): These are the least serious but most common types of business interruptions or failures, and include short-term electrical failures, blackouts, computer failures, air conditioning failures, information security threats, utility failures or an accident that severs a major power or communication line. This scenario may result in a minimal or temporary adverse impact on one or more departments or portions of the facility resulting in the need for the staff to temporarily share available office space and equipment. A minor emergency will not normally result in Plan activation unless the disruption is expected to significantly worsen and therefore have a major impact on one or more of the firm's essential processes and/or possibly affect the safety of its staff. This disruption lasts no more than 8 hours.

Level Two (2) (Major Emergency): At this level of disruption, emergencies are generally localized man-made or natural disasters, such as flooding, tornadoes, acts of terrorism or sabotage, and building/computer room fires or other events that make areas of the primary work site uninhabitable. A response to this type of incident could include delaying the completion of some tasks or transferring some of the firm's operations to an alternate site or facility. Such disruptions involve some operational impacts even though the firm's facility/building continues to remain available and staff continues to have access to some key, but not all of the firm's operating areas or office areas. This disruption last between 8 and 48 hours.

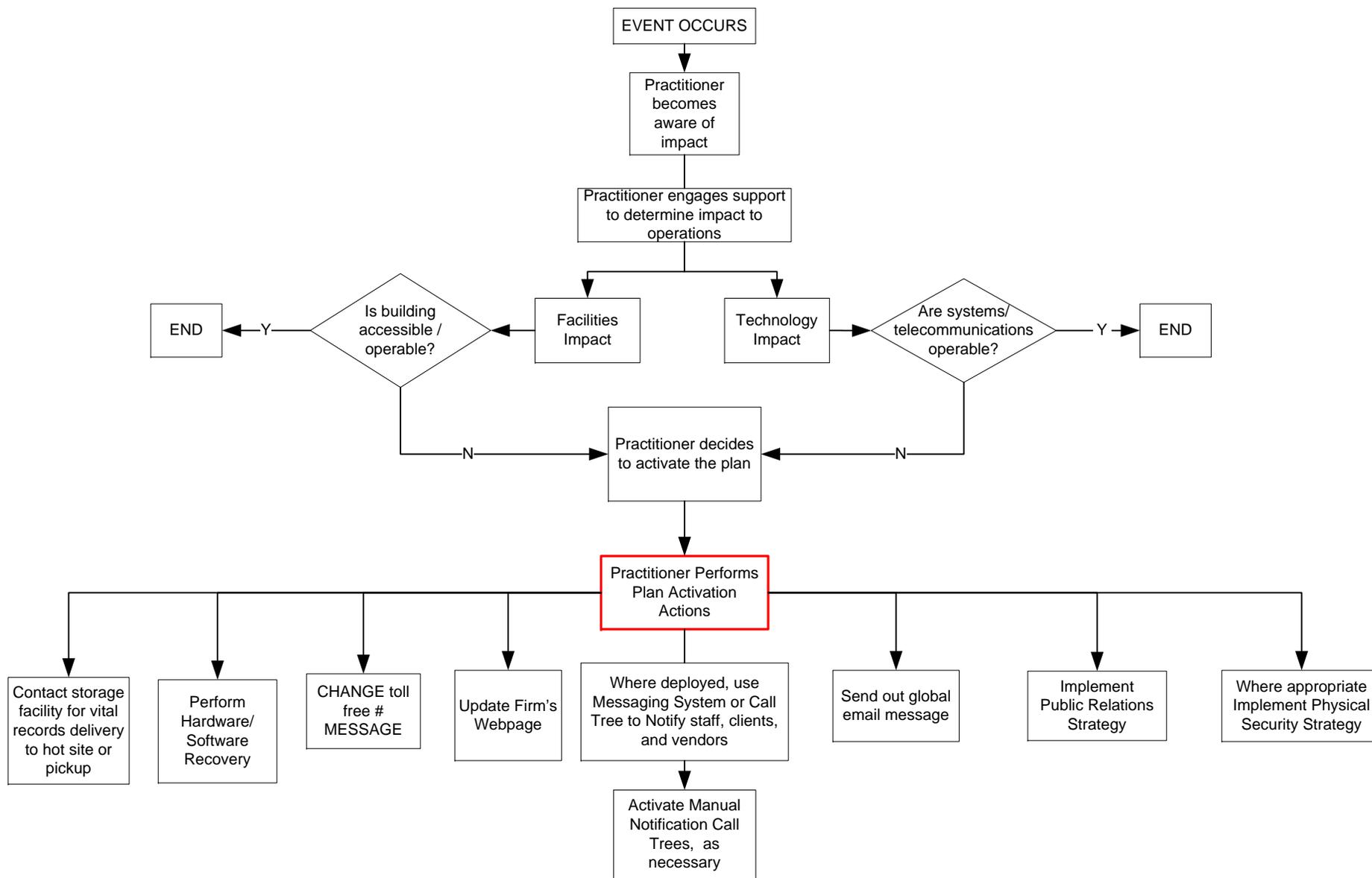
Level Three (3) (Disaster): At disruption level (3), there is an emergency which has prevented or which has the potential to prevent the capabilities of the firm to continue operations at its original office location, which has a severe impact on the firm's operations, and will likely result in temporary inaccessibility to the facility. These kinds of disasters could be caused by widespread natural disasters, such as hurricanes, massive flooding, earthquakes, contamination, environmental hazards, serious acts of terrorism or other events that could lead to the firm being destroyed, damaged or left uninhabitable. This situation will most likely result in the activation of the Plan, and even relocation.

These pre-defined levels of disruption are intended mainly to assist you in creating a plan that will cater to various levels of impact on your normal business operations. That said it is also

important to retain some flexibility in developing and implementing your Business Continuity Plan. A situation may arise which your Plan has not specifically anticipated.

A general course of action in the event of a disruption may look something like this:

Exhibit 2: Recommended Escalation Procedures



2.3 Alternate Facilities Operations

This phase of the Business Continuity Plan should cover the procedure for relocating to the alternate facility and resuming essential functions at this location. Such procedures should include each step, from the notification of the staff at the alternate site of the Firm's relocation plans, to preparation of the facility and actual resumption of essential processes. (*See Section 3.3, p.14, for more on Alternate Facilities.*)

2.4 Reconstitution

During this phase of a continuity plan, your firm returns to normal business operations. This process should be commenced 30 days after the Plan was activated. Your firm may follow the guidance of the government in determining whether it is safe to return to the geographical area affected by the disaster.

Does your Business Continuity Plan:

- Provide procedures for activation, relocation and reconstitution, including guidelines for personnel, instructions on moving to an alternate site, and relocating vital records to and from the alternate facility?
- Include clearly drafted escalation activation, and reconstitution procedures that guide the activation of the Plan and the resumption of normal operations?
- Include a decision matrix for procedure implementation with or without warning, during duty and non-duty hours?
- Provide the process by which to attain operational capability at the alternate facility within 24 hours?
- Include procedures for the notification of alternate facilities and on-site support teams?
- Include methods to identify components, processes and requirements, determined by the Firm, that ensure continued performance of essential functions?
- Include processes for the transition of responsibilities from the primary operating facility to personnel at the alternate facility?

The resumption of normal operations may take place at the original facility if it is safe and accessible or at a new and/or temporary facility if the original office is not habitable. The Emergency Management Team (EMT) should assess the original facility to determine if it is structurally sound, and equipped to carry out normal operations. If it is found to be neither, the EMT should assess an alternate facility, which depending on the extent of damage to the original office, may serve as the firm's new, permanent facility. The Plan may identify possible alternate sites for reconstitution. Alternatively, if your firm relies on telework as its relocation plan, it may maintain a virtual office until a reconstitution location can be found.

The Plan should outline processes, not only for locating new, temporary facilities, but also for actually moving into the new location and resuming normal operations. In general, the most critical functions are the last to be returned to the reconstitution site.

Non-essential processes or those not continued during Plan activation should be implemented first.

Throughout this and each of the previously discussed phases of a Business Continuity Plan, communication with personnel must be maintained. Your staff should be kept updated and instructed accordingly. It is also important to keep your clients informed of the status of your office, particularly in instances where your clients have upcoming court dates or other time sensitive matters.

Chapter 3.0 – Components of a Comprehensive Business Continuity Plan

3.1 Essential Functions or Processes

A law firm may carry out a number of important functions as part of its normal business operations. However, in the case of a disaster/disruption, which demands the activation of your Business Continuity Plan, resources and personnel may become limited. It is, therefore, important that your firm identify those functions or processes that are critical to carrying out the company's mission and objectives. These critical operations that must continue during and after a disruption are referred to in business continuity planning as the essential functions or processes.

A process may be identified by the person or the department that performs it. It is often difficult to define an essential process. There are many standard processes across law offices, including client intake, conflicts check and resolution, accounts payable, accounts receivable, payroll, and docketing. For instances in which your firm is unable to clearly define something as a process, consider a process to be a series of steps or actions that are performed in a sequence: beginning, middle, and end.

In identifying the essential functions of your firm, it is also important that you identify the resources (i.e. personnel, technology, vital records, external vendors, etc.) that are vital to carrying them out. Let us say, for example, that your office is flooded when the water sprinklers accidentally activate after hours and remain running through the night. It is critical that you keep track of the docket so as not to miss a court deadline and thereby face malpractice charges for not diligently representing your client. The docketing software was located on one of the desktops, which is drenched from the overnight shower. So while you have access to a laptop, you cannot access your docket. A Business Impact Analysis, which will be discussed in Section 3.1.2, will assist you in not only identifying your essential functions and the resources upon which they rely, but it will also allow you to examine possible alternatives to mitigate the risks to your normal operations. With this information, it will be much easier to recover operations after any type of disruption. (*See also attached Sample Business Continuity Plan, Section 2.2*)

3.1.1 Mission, Goals, and Objectives

One of the first steps in determining your firm's essential processes is to consider your mission, goals and objectives. Every law firm will likely identify its mission as that of serving the client. While that is accurate, what may vary is the manner in which a firm does just that. Does your firm handle litigation? What type of litigation? Personal Injury? Or is yours a business law firm, dealing mainly in transactional work? Your answers to each of these questions will drive your answer to the penultimate question of "what is it that we do for clients, and how do we do that?" and then the ultimate question of, "what is our mission?" *This, in turn, will assist in determining the essential processes*

of your firm. The mission and goals of your company should also be included in your Business Continuity Plan.

3.1.2 *The Business Impact Analysis (BIA)*

A Business Impact Analysis is designed to help you: 1) review your firm's essential practices and processes; 2) determine the relative priority of each; 3) show how those essential functions are inter-related; and 4) identify the resources (ex. personnel, technology) necessary to continue these essential processes. In doing this, the BIA allows you to identify possible points of failure in the execution of the essential processes, determine the impact of such failures and identify or create alternatives or workarounds to these vulnerable areas.

The key to the Business Impact Analysis is going beyond the identification of the essential processes, and noting that these processes may not be carried out without certain resources. As such, it is recommended that the individual with the most functional knowledge of a particular business process assist in developing the Business Impact Analysis and Business Continuity Plan for that particular process, even if that person is an external vendor. If, for instance, your firm uses an outside accountant for bookkeeping and strategic accounting, you should discuss with that person the relative priorities of your accounting processes. In another instance, your office manager may have the most knowledge of your office processes, and so should participate in the development of the Business Impact Analysis for that particular process and thus, be involved in the business continuity plan development.

Conducting a Business Impact Analysis may seem a rather daunting task. Perhaps the easiest of the numerous ways to do this, is by using a spreadsheet similar to that displayed below.

Business Impact Analysis (BIA) Checklist:

- A BIA is scheduled to be performed at least every three years.
- There is a process in place to perform BIA data updates, regularly.
- BIA identified and prioritized the Firm's essential functions, including the internal and external processes upon which the functions are dependent, and documented them in the plan.
- BIA included the identification of critical IT systems and components.
- A cost-benefit analysis was performed as planning options were developed.

Exhibit 3: Sample Business Impact Analysis Spreadsheet

Business Unit	Manager	Process	Vital Records	External Vendors	Resource Requirement (technology, software, etc)	Recovery Time Objective (RTO)
Docket	Jane Smith	Litigation	Clients' Files, Other Work Product for the relevant case	n/a	Litigation Management Software	Within 2 hours

As with other elements of this Guide, the Business Impact Analysis may be tailored to meet the particular needs of your firm. Once the data is accumulated, it will be easier to prioritize your essential functions based on the recovery time objective (i.e. the acceptable time in which this process must be resumed after a disruption) and identify possible vulnerabilities that may result from the dependence on internal and external resources.

Technological Resources

The Business Impact Analysis will also assist in determining upon which systems and applications your essential processes are dependent. In addition, the recovery time objective specified for each process will inform decisions regarding the timeframe in which technology services need to be recovered. By way of an example, the trademark application process is heavily dependent on web access, and so in turn depends on electricity, a working computer, availability of a web browser, and a network or cellular connection to the internet. Each of these is a system or application without which the process as defined cannot be performed. In order to mitigate the risk to this essential process, the Business Continuity Plan should ensure accessibility to these resources, or identify an alternative means of performing this essential function without the mentioned systems and applications (ex. filing a paper trademark application).

Personnel and External Vendors

While collecting and inputting data for the Business Impact Analysis, you should note the relationship that you have with any external vendors: sole source, major provider or one of many. For sole source vendors that provide critical/time sensitive services (i.e. a service which is necessary to carry out an essential process with a recovery time objective of less than 24 hours), note whether there is a potential single point of failure related to your reliance on that vendor's products or services. This may go further and verify that the sole source vendors have effective continuity strategies in place, or put in place contingency contracts with other vendors to ensure continuity of service after a

disruptive event to your primary vendor's operations. The Business Impact Analysis will assist you in determining which of these sole source vendors are critical to your continued business operations.

After completing and prioritizing your list of processes, it is also suggested that you note any internal or external processes upon which your essential functions rely. This will facilitate the development of a sequence of recovery, ensuring that the supporting processes are also prioritized.

3.1.3 Planning Assumptions

The combination of the firm's mission and the results of your Business Impact Analysis will allow certain assumptions to be made, assumptions that will define or limit the circumstances under which the Business Continuity Plan and personnel will operate in the event of a disaster.

3.1.4 Risk Assessment (RA)

A Risk Assessment, unlike the BIA, takes a more in-depth look at the possible threats to the essential functions in the case of a disruption. Along with identifying your firm's essential functions, the Risk Assessment allows you to determine hazards that could possibly impact the continuation of your essential processes. In doing so, you develop continuity hazard scenarios and assess the risk that these hazards will have on the essential functions of your office/firm.

Your Risk Assessment should include:

- An analysis by the Firm's leadership of the acceptable risk for the Firm's main and alternate facilities.
- A vulnerability assessment that determines the effects of all hazards on the main and alternate facilities.
- A cost-benefit analysis of implementing risk mitigation, prevention or control measures for these facilities.

Risk Assessment Checklist:

The Firm has:

- Identified and assessed the likelihood of potential threats to the Firm's mission and location.
- Identified scenarios that pose unacceptably high levels of risk to the Firm's mission.
- Identified and implemented mitigation strategies that reduce either the likelihood or consequence of high-risk scenarios.
- Conducted a comprehensive risk assessment of building security and safety issues that might arise from natural or manmade threats or activity on or near the Firm's facility.

This will lead to an examination of each vulnerable element or system (ex. IT supporting system or database) and the probable consequences that these will have. Having done this, the RA requires you to identify existing or create new safeguards or

measures, implement mitigation strategy, and calculate the effectiveness of each.

3.2 Order of Succession / Delegation of Authority

It is recommended that your continuity plan include lists which, separately, indicate the order of succession and delegation of authority. The order of succession aims to ensure an orderly and pre-designed transition, particularly when the designated leadership personnel are unavailable, while the delegation of authority allows for rapid, effective response when the normal decision-making channels are disrupted. As part of your Plan, each of these lists should be communicated to all of your staff. Equally important, all continuity leaders and their successors should be trained and exercised in their roles and responsibilities on a regular basis.

3.3 Alternate Facilities

The Plan is intended to minimize the impact of disruptions that leave your firm's facility (ies) completely inaccessible for more than 24 hours. With this in mind, it is recommended that the Plan identifies alternate facilities to which you and your staff may relocate and resume the essential processes of your company. This facility, though intended to be temporary, should be equipped to accommodate the personnel your essential functions. In determining the location of this facility, it is often helpful to imagine three possible scenarios:

- 1) The disruption has affected only the building in which your firm/office is housed.
- 2) The disruption has affected your building and those around you.
- 3) The disruption has left inaccessible the geographic region in which your office/firm is located.

Succession and Delegation Checklist:

- Plan includes orders of succession and delegations of authority, including alternates, to perform key functions.
- Orders of succession for the leadership positions in the Firm are current, and revisions are distributed to all personnel in a timely manner.
- Orders of succession are at least three positions deep, include devolution counterparts, and are geographically dispersed where feasible.
- Orders of succession identify the rules and procedures to be followed when facing issues of succession.
- Any temporal, geographical and/or organizational limitations to the authorities in its order of succession procedures.
- Plan includes the method used to notify successors of the change in leadership status.
- Delegations of authority were documented in advance and specify the authority for designated personnel to make key decisions during a continuity situation.
- Plan outlines explicitly the authority of designated personnel.
- Plan specifically identifies the circumstances under which authority begins and ends, delineating limitations, exceptions and accountability.

Alternate Facilities Checklist:

- Firm identified and maintains at least one alternate facility, including virtual office options and alternate usages of existing facilities.
- There is sufficient distance between the primary and alternate facilities, or alternate facilities and the threatened area.
- Plan considers and annually reviews any Memorandum of Agreement (MOU) and other contracts that may be affected by relocation.
- Firm annually re-evaluates its alternate facilities for suitability and functionality.
- Firm considered health, safety and security of personnel when choosing the alternate facilities.
- Alternate facilities include sufficient space and equipment, reliable logistical support, services, and infrastructure systems to sustain operations for up to 30 days.
- Plan details procedures for the orientation of continuity personnel and for conducting operations and administration at all alternate facilities.
- Plan covers procurement and acquisition procedures for necessary personnel, equipment and other resources.
- Alternate sites have back-up power supplies, which are periodically tested and maintained.
- Plan contains transportation support element which identifies resource requirements and procedures for getting personnel to and from sites.
- Continuity plan addresses housing to support personnel at or near the alternate facilities, as necessary.

In this case, you may chose to list three alternate facilities, each of which will be accessible in one of the above scenarios.

In situating an alternate location, it is important to not only locate a space, but also ensure that the necessary resources are available, or can be easily acquired. Resources include items such as desks and chairs, computers, printers, etc. In identifying resources in this manner, you will also determine the minimum level of resources necessary to support the processes identified in the Business Impact Analysis. For example, if an essential business process is in-person client meetings, then a critical resource would likely be a private conference room. If such meetings are usually done one-on-one, it may also be done in an office space, thereby eliminating the need for the conference room, and minimizing the resources needed. Once you know the resources that are necessary to continue your critical business functions, then you make certain they are available at the alternate location.

For a small firm or solo practitioner, a more economically feasible solution might be the creation of what is referred to as a “virtual office.” This is done through telework, and the use of other technology such as video conferencing. While this may appear to be the simplest alternative, it is important that you and your staff not only have the capability to work remotely, but also that such capability is tested regularly. In addition, all of the programs, files and records that are needed for the continuation of your essential functions, will have to be accessible to you at your remote location. Returning to the docketing scenario posed previously, the litigation management software must be accessible to you at the “virtual office.” The solution: have a backup of this software on your desktop at home, and synchronize regularly with your office software.

3.4 Continuity Communications

Continuity communications are an essential component of a Business Continuity Plan. This entails the identification, determination of availability, and redundancy of internal and external communication systems. The internal communication system(s) are those used to communicate with your personnel and include, among other things, alert notification procedures, call lists and provisions for degradation of communications and IT infrastructure. The external communications, on the other hand, are those through which your firm will communicate with your clients, other attorneys, courts, vendors and the public.

Communications Checklist:

- Plan details procedures for notifying personnel, points of contact, clients, stakeholders and other relevant parties of the Firm's continuity plan activation and status.
- Plan describes procedures to communicate with, update and instruct essential and support personnel throughout each phase of the continuity situation.
- Alternate paths and backups for all communication lines exist, including those at alternate sites.
- Plan addresses the need to sustain interoperable communications that facilitate communications with other inside and outside the organization.
- Communication lines between the primary site, alternate facilities, and any IT data center is maintained.

3.5 Vital records Management

The Business Impact Analysis will assist you in identifying those records, information systems and data management systems necessary to support the essential functions. Among these vital records should be the Emergency Operating Records – those needed specifically for the continuation of essential processes (ex. docket, client's files, order of succession and the Plan) – and the Rights and Interests Records – documents necessary to maintain the legal and financial rights of the firm and its personnel (ex. accounts receivable, insurance records and personnel files). These records may also include emergency information for important key external contacts, including the courts in which you litigate, and your clients. The latter will be particularly important if you are to continue, diligently, representing your client.

In order to protect these and other records that you may deem vital to the continued essential functions of your office, the following are suggested:

Vital Records Checklist:

- Among the vital records protected are all continuity documents specifying how the Firm will continue to operate?
- The Firm has incorporated its vital records program into the overall continuity plans and procedures.
- Plan outlines policies allowing only authorized personnel to access the Firm's data.
- Program files and applications are backed up off site and tested periodically (if applicable).
- Firm's data is backed up daily or synchronously.
- Inventory of vital records is maintained at a backup/offsite location.
- Vital records are reviewed annually so that latest version is available.
- Back-up data is tested or verified regularly to ensure data is being saved.
- Plan identifies the hardware and software critical to recover the essential functions.
- Plan provides for uninterruptable power supply for these systems.

- Develop and implement a policy for the routine backup and retention of electronic and hard copy records. Include the development of specific procedures for nightly backups, including the consideration of tape versus digital backups.
- Hard Copy records: Ensure that paper records are scanned and stored electronically or copied and stored offsite.
- Electronic Records: Consider the need to implement a full disaster recovery strategy allowing for the recovery of records that support mission critical functions in a timely manner.
- Cloud Solutions: Consider cloud storage as a strategy to support both backup and remote recovery.

3.6 Human Capital

Perhaps one of the most important steps that you will take during an emergency event is accounting for the whereabouts and safety of your staff. Also, your staff should be updated regularly on the status of the office, the phase of the Business Continuity Plan and their respective instructions. In order to effectively accomplish this task, you should have a Contact List for the office personnel, which would contain names, phone numbers (and alternates), email addresses, and emergency contacts. This list should be updated annually, if not more often. When new personnel join the office/firm, their information should automatically be added to the Employee Contact List. The list is also to be treated as a vital record and so should be readily available to the Emergency Management Team during an emergency situation.

In addition to the Contact List, and as previously mentioned, a system should be devised whereby you can continually update your staff on the situation and provide instruction. Existing guidelines regarding human capital management (ex. pay leave, payroll, telework and benefits)

should be incorporated into this component of your plan. Your staff will also need to be kept informed regarding these issues. It is often helpful and more effective to appoint an individual as Human Capital Liaison.

Human Capital Checklist:

- Plan describes procedures for contacting and accounting for all employees, including Emergency Management, Disaster Recovery and Mission Essential personnel, in the event of an emergency (both during and after office hours). This includes up-to-date contact information for each person.
- Plan provides for a process of communicating human capital guidance (ex. pay, leave, staffing requirements, work scheduling, benefits and hiring) during each phase of the emergency.
- Firm provided guidance (in the Business Continuity Plan or other document) to personnel on individual preparedness measures.
- Firm has officially informed all personnel of their roles or designations, providing documentation to ensure personnel know and accept their respective roles and responsibilities.
- Firm instituted methods to familiarize personnel with human capital management during an emergency, such as using the intranet website or providing an orientation briefing.
- Plan includes listings of pre-identified replacement personnel and instructions on procuring necessary personnel.

3.7 Devolution of Control

Devolution involves the transfer of responsibilities for essential functions from the original office to another law office for an extended period of time. This may be more applicable to larger firms that have offices in various states.

Nevertheless, this is a component that a small firm or solo practitioner might consider adopting. In the case of the small firm or law office, arrangements may be made with law offices or firms that you have worked with outside of the jurisdiction in which you practice.

Devolution would most likely be put into play when the entire geographic region (ex. the Washington DC metro area) has been rendered inaccessible by a disaster. In such an instance, the courts may be given authority to transfer their docket to the nearest unaffected jurisdiction. If the courts continue to operate in this alternate jurisdiction, you too will be expected to diligently represent your client in that new location. Provisions should, therefore, be made in your Business Continuity Plan to allow for this.

Devolution Checklist:

- Plan identifies circumstances that would likely trigger devolution, specifying how, when and what control will be transferred.
- Firm established and maintains capability and process to restore authorities to their pre-event status upon termination of devolution.
- Procedures and resources are in place or available for an immediate and seamless transfer of control.
- Plan includes roster of personnel who will be stationed at the devolution site. Such personnel have been trained to perform essential functions at the devolution site.

3.8 Test, Training & Exercise (TT&E)

As part of your Business Continuity Plan, you should create a schedule for testing, training and exercise. Generally, each is done, annually. This schedule should also include the maintenance of the BCP, the process of updating the information in the plan (ex. contact information, Lessons Learned and new team members).

The aim in testing the Plan is to review and validate the plan, and identify areas that could use improvement. It also allows you the opportunity to update contact information, order of succession, delegation of authority and the Emergency Management Team, if necessary. All elements of a plan do not have to be tested at the same time. On the contrary, you may focus your test to examine one particular department or area.

Personnel, particularly those with continuity responsibilities and their alternates, should be trained regularly to familiarize them with the Plan implementation procedures and their respective roles in that. Both the Business Continuity Plan and personnel should participate in an annual exercise. This simulates an emergency situation that requires, at the very least, the activation of the Plan. The staff is expected to go through the various business continuity procedures, using the Plan as a guide.

At the conclusion of an exercise, the Emergency Management Team and other personnel partake in a “hotwash” or a reflection on the exercise. “Lessons Learned” during the exercise should be noted, included in an After Action Report, and incorporated into the Business Continuity Plan.

Test, Training and Exercise (TT&E) Checklist:

- Plan provides for formal documentation of all tests, and reporting of the results.
- Firm developed and maintains a TT&E program for conducting and documenting tests, exercises and training.
- Annual training/testing is scheduled annually to:
 - Exercise the Plan or phases of it (ex. perform actual relocation to alternate site or virtual office).
 - Train/test personnel on the Plan and their respective roles and responsibilities, including resumption of essential functions, and retrieval of vital records and databases.
 - Test access to the backup data and vital records and update accordingly.
 - Test notification and communication systems, both internal and external.
 - Test of the IT and communications equipment, including software.
- Firm conducts debriefing or hot wash after each exercise to identify lessons learned, and areas of the plan that require improvement.
- Results and findings from the tests, training and exercises are documented and incorporated into the plan.
- Firm updates the Business Continuity Plan regularly, including revisions to contact lists as persons leave or join the Firm.

3.9 Reconstitution

See discussion of this phase and process in Section 2.4 above.

Reconstitution Checklist:

- Firm has an executable plan for recovering from the effects of an emergency and transitioning back to normal operations once the threat or disruption has passed.
- Plan includes redeployment procedures for phasing down the alternate site operations, and returning personnel, records and equipment to primary or new facility.
- Plan covers procedures for notifying personnel, clients and other parties of reconstitution.
- Plan includes procedures for the effective transition of vital records and databases from alternate site to original or new facility.

Conclusion

As natural and man-made disasters become more frequent and less predictable, law firms are encouraged to be more resilient, and incorporate Business Continuity Planning into every day operations. This Guide is intended to instruct you in doing just that through the creation of a Business Continuity Plan tailored to fit the needs of your firm.

Guidance

Federal Continuity Directive 1 (2007), <http://www.fema.gov/about/org/ncp/coop/planning.shtm>.

ATTACHMENT A:

**SAMPLE BUSINESS CONTINUITY
PLAN**

SECTION 1: GENERAL PLANNING PARAMETERS

This section outlines the Purpose and Scope of the BCP Planning Effort.

1.1 Purpose

This Business Continuity Plan (BCP) contains planning procedures and guidance to ensure the uninterrupted performance of the essential functions of the Firm during a disruption of normal business operations that lasts 24 hours or longer.

1.2 Applicability and Scope

This Plan covers the full spectrum of potential threats, crises, and emergencies – natural and man-made – that may potentially affect the Firm’s essential operations. Response to temporary events or business interruptions of less than 24 hours duration is not within the scope of this Business Continuity Plan. If there is a possibility of immediate injury to any of the Firm’s staff or other persons in the Firm’s office, immediate emergency response and building evacuation procedures should be implemented as detailed in the Occupant Emergency Plan (OEP). (A copy of the OEP may be attached as an Appendix.)

1.3 References

This Plan was developed to be compliant with corporate policy and best practices in continuity planning.

1.4 Planning Assumptions

Planning Assumptions are established based on the mission of the Firm and the result of the Business Impact Analysis.

1.5 Business Continuity Plan Maintenance

The (Insert Job Title or Person) is responsible for the currency and accuracy of this Plan and the BCP related data regarding its mission essential recovery requirements, functions, resources, vital records, and personnel. This includes ensuring that the all information contained on the flash memory drive given to each person in the office, is kept up-to-date. (Insert Job Title or Person) has a duplicate flash drive in his/her office, which is updated at least quarterly.

The (Insert Job Title or Person) will review this plan and associated data at least quarterly and make changes as appropriate regarding key organizational structure, personnel, resources, vital records, work location, or other data that impacts the implementation of this plan. Changes to this BCP are documented and attached to this Plan.

The Firm will review its Business Impact Analysis (BIA) data quarterly and update it as necessary. Individuals identified by (Insert Job Title or Person) as having functional knowledge of particular processes are responsible for the currency and accuracy of the BIA data, and other related data in the BCP.

SECTION 2: CONCEPT OF OPERATIONS

This section outlines the BCP Organizational Structure and Framework for Planning.

2.1 Objective

The objective of this plan is to ensure that the capability exists for (Insert Firm Name) to continue performing its essential functions during an emergency or disruption lasting longer than 24 hours.

2.2 Essential Functions

The Firm's essential functions are listed in the **Essential Processes List** of this plan and are sorted in order of priority according to the recovery time objectives specified by the respective departments of the Firm. In the event of a business interruption lasting longer than 24 hours after BCP activation, the Firm's essential functions will be recovered in accordance with the priority given to them. The **BCP Activation Checklist** of this plan, details the steps to be taken in response to a business interruption, and towards resuming the Firm's essential business processes.

Essential Processes List⁷

Essential Processes	Recovery Time Objective (RTO)

⁷ This and other charts may also be attached to the Business Continuity Plan as Appendices, particularly in situations where they may contain a significant amount of information.

2.3 *BCP Organization*

This section is optional, and may be inapplicable based on the size of the firm or law office.

The Firm's BCP organization is comprised of personnel with key responsibilities (based on their functional knowledge and/or leadership) who make up the **Emergency Management Team**, **Department Recovery Team** and mission essential personnel. These groups/individuals are responsible for continuing to execute the Firm's essential functions at an alternate recovery site within 24 hours of the disruptive event. Designated Department Recovery Team personnel will coordinate with the Emergency Management Team (EMT) for the recovery of the BCP mission essential functions upon BCP activation and eventual reconstitution of the affected Firm's primary work site. **BCP Roles and Responsibilities** of this Business Continuity Plan (BCP) lists the responsibilities of the response and recovery team members.

Personnel not identified to participate as BCP emergency management and recovery team members, or serve as mission essential personnel at an alternate recovery site, may be instructed to telework, or remain on-call or standby, as necessary, and until directed to do otherwise. The Firm's leadership has identified the number of personnel to serve as mission essential at an alternate recovery site, telework from home, or be on standby status upon BCP activation.

2.3.1 **Emergency Management Team (EMT)**

The Emergency Management Team (EMT) is responsible for centralized crisis management. The EMT may include the Department Recovery Team.

2.3.2 **Department Recovery Teams**

The Firm's Department Recovery Team members are responsible for recovering the department's mission essential operations in the event of a business interruption lasting longer than 24 hours. General team member responsibilities will vary depending on the type and impact of the business interruption or emergency affecting the organization. The respective departments are responsible for maintaining the element and data of the BCP that pertain to their particular essential processes.

2.3.3 **Personnel Resources**

The Firm has identified the number of personnel it needs to serve at the alternate site, to telework, and to remain on-call in the event of a business disruption and subsequent BCP activation. The **Employee Contact List** of this Continuity Plan contains the names and contact information for all of the Firm's personnel. Each person will be accounted for, and receive instruction on their status or responsibilities in the case of a disruption.

Roles and Responsibilities⁸

Emergency Management Team (EMT) Members	Roles and Responsibilities
Team Leader	
Alternate Leader	
Team Member 1	
Team Member 2	
Team Member 3	

Department Recovery Team	Roles and Responsibilities
Team Leader	
Alternate Leader	
Team Member 1	
Team Member 2	
Team Member 3	

Essential Personnel	Roles and Responsibilities

⁸ The number of members on each team may vary due to the size of the firm.

2.4 Order of Succession

The Order of Succession list below provides the order and protocol of succession for the leadership of the Firm. Succession will take place only when the (Insert Senior/Leadership Position) is unavailable or a higher authority directs the succession.

BUSINESS FUNCTION	PRIMARY	ALTERNATE
BCP Team Leader	John Doe	Fran Doe
General Ledger	Jane Doe	Frank Doe
Payroll	Jim Doe	Faith Doe
Budgeting	Janice Doe	Fred Doe
Accounts Payable	Jeffrey Doe	Fern Doe
Treasury	Jill Doe	Ford Doe

2.5 Delegation of Authority

In case of a disruptive event, the (Insert Senior/Leadership Position) or designated successor maintains authority to delegate authority with or without the need for succession. The Firm's leadership will be responsible for such functions as business recovery management, staff notification, coordination, oversight, and reporting up the Sample Company chain of command for management and planning for resumption of normal operations.

2.6 Alternate Operating Facilities

The Firm may also choose a virtual office as its alternate recovery site.

Alternate sites serve as recovery locations at which the Firm's key personnel can continue to carry out the essential processes after a business interruption lasting longer than 24 hours. The Firm has chosen three sites, one for each of the following scenario:

- 1) The disruption has affected only the building in which your firm is housed;
- 2) The disruption has affected your building and those around you;
- 3) The disruption has left inaccessible the geographic region in which your firm is located.

Alternate Operating Facilities, below, lists the name, location and technological capabilities of each of the chosen facilities.

Alternate Operating Facility 1

Location Name	Address	Description of Space Available	Technology Capabilities	Resources Necessary

Alternate Operating Facility 2

Location Name	Address	Description of Space Available	Technology Capabilities	Resources Necessary

Alternate Operating Facility 3

Location Name	Address	Description of Space Available	Technology Capabilities	Resources Necessary

2.7 Continuity Communications

In the event of a disruption of the normal business operation of the Firm, all personnel shall be contacted via... (Insert the manner and procedures to be used to contact personnel, clients, court, public etc.) (ex. website, pre-recorded electronic message and email).

2.8 Vital Records and Databases

Vital hard copy and electronic records, files and databases are needed to perform essential business processes at the alternate recovery site, conduct key business operations while the BCP is activated, and to reconstitute normal operations after the event. The Firm has identified its essential vital records and data and their locations in the **Vital Records List** below. This list includes information on how to access these records while at the alternate site, including via flash drive or hardcopy both provided to essential personnel beforehand.

Vital Records and Databases

	RECORD NAME	LOCATION	DESCRIPTION	PROCESS	ACTION
1.	Budget Template				
2.	Actual Reports				
3.	Budget of previous years				
4.	Input from manager files				
5.	Overtime sheets				
6.	Payroll authorizations				

2.9 Human Capital

(Insert Job Title or Person's Name) is the Human Capital Liaison. As such, he/she is responsible for accounting for all Firm personnel and updating them on, among other things, 1) the Business Continuity Plan status (activation, relocation, and reconstitution); 2) human capital management element, including pay leave, payroll, benefits and telework. The **Employee Contact List** below includes the names and contact information for all Firm staff. The (Insert Job Title or Person's Name) should note the status of each staff member, including their availability for work.

Employee Contact List

NAME	HOME	CELL	STATUS/ AVAILABILITY

2.10 Devolution of Control

Devolution involves the transfer of responsibilities for essential functions from the original office to another law office for an extended period of time. Devolution would most likely be put into play when the entire geographic region has been rendered inaccessible by a disaster. The decision to transfer these responsibilities will be made by (Insert Job Title or Person's Name). Indicate the name and address of the firm/office to which control will be transferred, and the procedures by which this transfer will take place.

2.11 Office Relocation Kits

This section is optional.

Essential personnel (those responsible for continuing essential processes) should have Office Relocation Kits containing those items considered necessary for their successful relocation and resuming of the critical functions. These may include:

- 1) Reference documents
- 2) Office Supplies (pencils, pens, paper, folders, paper clips, memo pads, etc.)
- 3) Employee Contact List
- 4) Calendar/Docket
- 5) Flash drive with backup data from employee's office PC and vital records

The documents and data included in this kit, whether hardcopy or electronic, is updated by (Insert Job Title or Person's Name), quarterly.

SECTION 3: ACTIVATION AND IMPLEMENTATION

This section outlines the BCP Framework for Plan Activation and Implementation.

3.1 BCP Activation and Response (Phase I)

The Firm's use of the prescribed instructions listed in the **BCP Activation Checklist**, located at the end of this Section, will vary because approaches to business interruptions will depend on the damage/impact to the Firm's critical operations and work site. The **BCP Activation Checklist** provides step by step instructions to notify and direct affected Firm personnel involved in the various phases of an emergency response, BCP activation, recovery of business processes, essential personnel relocation to the alternate recovery site, and emergency team participation.

3.1.1 BCP Activation

The (Insert Job Title or Person's Name) or designated representative will determine BCP activation for (Insert Firm's Name) based on available information of the event or threats and EMT recommendation.

3.1.2 Personnel Notification

The Firm will use the **Employee Contact List** of this Plan as the primary method of informing its personnel of Business Continuity Plan activation and any special instructions. This contact list contains each employee's name and home and/or cell phone number. On-call and standby personnel will be instructed to either telework or remain at home to await further instructions. **Note:** This contact list contains restricted personal information that should be handled and protected with considerable care.

Other methods to inform impacted personnel of BCP activation include the following:

- Public address system
- Email system
- Verbal announcements at the work site
- Electronic Bulletin Board
- Emergency group paging

3.1.3 Relocation

Following the notification of the BCP activation, the Firm's leadership will initiate the notification to relocate to the designated alternate recovery site to continue the Firm's essential functions.

3.2 Alternate Facility Operations (Phase II)

This phase begins when the Firm's essential personnel arrive at the designated alternate recovery site to continue their business unit operations until emergency operations can be terminated. EMT members will resolve day-to-day issues to ensure support capabilities continue at the alternate site for mission essential operations.

3.2.1 Arrival at Alternate Facility

Upon arrival at the alternate facility, the Firm's relocated personnel will immediately begin to retrieve pre-positioned information and data, activate specialized systems or equipment, establish critical communications, execute the Firm's mission essential functions, and evaluate the implications of the emergency situation at hand.

3.3 Reconstitution (Phase III)

BCP Phase III begins when the (Insert Job Title or Person's Name) confirms that the emergency situation has ended and is unlikely to recur.

3.3.1 Alternate Facility Operations Termination

During this period, the Firm will develop a time-phased schedule to transfer functions, personnel, equipment, and records from the alternate facility to the restored facility. Once essential functions are transferred to the restored facility, the Firm's operations at the alternate facility will cease.

3.3.2 After Action Report

Following a return to normal operations, the Firm will develop an After Action Report containing a discussion of lessons learned and issues to be considered for incorporation into the Business Continuity Plan training program and/or as a revision to the BCP.

Business Continuity Planning Checklist

Step	ACTION	Completed	CONTACT(S)/ COMMENTS
1.0	BCP ACTIVATION DECISION	Y/N	
	1.1 EMT receives notice of BCP activation, which would result in the activation of the Business Continuity Plan (BCP) in <u>three</u> phases: Phase I – BCP Activation and Response Phase II – Alternate Facility Operations Phase III – Recovery / Reconstitution		
2.0	PHASE I - BCP ACTIVATION AND RESPONSE	Y/N	
2.1	Use Employee Contact List to inform Department Recovery Team and essential personnel of the BCP activation and provide instructions to relocate to an alternate recovery site at a specified time or to telework, if possible. <i>REF: Employee Contact List</i> <i>REF: Essential Processes List</i>		

2.2	Use Employee Contact List to inform <u>non-mission essential</u> and <u>support employees</u> concerning their status (e.g. temporary release from work, stand-by, telework, return to duty), and provide them with any special instructions (e.g. when and where to return to work), if necessary. <i>REF: Employee Contact List</i>		
3.0	PHASE II. ALTERNATE FACILITY DECISION	Y/N	
3.1	Provide instructions to Recovery Team and essential personnel on the appropriate alternate facility, given the Level of Disruption. <i>REF: Essential Processes List</i>		
4.0	ALTERNATE RECOVERY FACILITY PREPARATION	Y/N	
4.1	Confirm that alternate site or virtual office is suitably equipped with data systems, communications, and other technology necessary for resumption of essential functions.		
5.0	RELOCATION TO ALTERNATE RECOVERY FACILITY	Y/N	
5.1	Department Recovery Team and essential personnel meet at their designated alternate work sites or alternate recovery facility(ies) to restore their impacted essential business operations. <i>REF: Essential Processes List</i>		

	<i>REF: Vital Records</i>		
6.0	ALTERNATE RECOVERY FACILITY OPERATIONS		
6.1	EMT Leader will coordinate with staff to resume operations at the alternate site.		
6.2	For events that occur towards the end of the month, consider the implications for Payroll, Accounts Payable, and Financial Statement Preparation		
7.0	PHASE III – RECOVERY / RECONSTITUTION	Y/N	
7.1	Return to Primary Worksite		
7.1.1	Develop schedule to return temporary work operations, personnel, records, and equipment from alternate recovery site back to primary work site.		
7.1.2	Continue mission essential operations at the alternate work site until the affected primary site has been returned to its original state including required office infrastructure support, equipment and resources, Sample Company network access, and telecommunications capabilities.		
7.1.3	When the primary worksite is habitable and operable acquire, install, check and bring all business functions to operational status.		

7.1.4	Report progress and validate transfer of mission essential operations to the primary work site.		
7.1.5	<u>IF</u> personnel were only able to manually (versus electronically) perform their administrative processes during the business disruption, they will now electronically enter the data that was previously done manually.		
8.0	POST BCP EVENT ACTIONS		
8.1	Coordinate feedback to review BCP activities during the disruptive event, evaluate effectiveness, and identify improvement areas.		
8.2	Provide feedback for After Action Report (AAR) to the Emergency Management Team.		
8.3	Update BCP plans as necessary based on lessons learned.		

Section
4

SECTION 4: TESTS, TRAINING AND EXERCISES

This section outlines BCP Framework for Plan Testing, Training, and Exercises

Firm employees with BCP responsibilities (emergency team members, mission essential personnel and department recovery personnel) must understand their role in BCP execution and their relationship to the organization’s BCP responsibilities. Quarterly BCP refresher training sessions will be provided to all current and new personnel. The Firm will accomplish quarterly evaluations of its BCP recovery processes and procedures and will document the results of those evaluations. **Testing, Training Exercise Program**, below, provides a timetable by which this plan, and various elements of this plan are tested and exercised.

Testing, Training Exercise Program

Test, Exercise or Training	Timetable	Comments	Actual Dates Tested or Exercised						
Business Impact Analysis	Quarterly								
Plan Revision	Annually								
Update Vital Data and Records	Quarterly								
Update Employee Contact List	Quarterly								
Training Session	Annually								