



## **State Laws Impacting Georgia Counties during the 2020 Public Health Emergency**

### **State of Emergency**

On March 13, 2020, President Trump issued a [Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease \(COVID-19\) Outbreak](#). On March 14, 2020, Chief Justice Melton issued an [Order Declaring Statewide Judicial Emergency](#) and Governor Kemp issued a [Declaration of Public Health State of Emergency](#). The Governor’s Declaration was ratified by the Georgia General Assembly through [House Resolution 4EX](#) (HR 4X) on March 16, 2020. The state of emergency is effective for 30 days, at which time it may be renewed, if necessary.<sup>1</sup>

In general, a state of emergency is a declaration by the government that suspends normal governmental functions, alerts citizens to change their normal behaviors, or begins implementation of emergency preparedness plans in certain geographic regions.

### **Local Declaration of Emergency**

Some local government officials declare a “local state of emergency.” Although there is no specific statutory authority for declaring a “local emergency,” a county may use this as an order to trigger provisions of its emergency management ordinance. A local state of emergency is primarily used to alert citizens and staff of the emergency and to enact certain local ordinances and procedures for dealing with emergencies.

A county’s emergency management ordinances are different than the county’s emergency management agency (EMA) plan discussed under the State Declaration of Emergency below. The county’s emergency management ordinance may activate different procedures that allow the county to have more flexibility while responding to the emergency – and remain in compliance with their policies as required for FEMA reimbursement. For instance, the county’s purchase thresholds and procedures may be lowered during a state of local emergency (or state or federal emergency, depending upon how the ordinance is worded). Those ordinances may automatically go into effect once the Governor or President declared a state of emergency – or it may require an action of the commissioners to trigger it. The wording of a specific county’s emergency management ordinance must be reviewed to determine its implementation process and impacts upon county operations.

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<sup>1</sup> O.C.G.A. § 38-3-51(a).

## State Declaration of Emergency

### **In General.**

When an emergency occurs that may overwhelm the resources normally available, the Governor can declare a state of emergency. The Governor's declaration of emergency authorizes the state and county to exercise emergency powers outlined in O.C.G.A. §§ 38-3-1 through 38-3-64.<sup>2</sup> It also activates the county's emergency management plan developed by the county EMA director with the public safety and public health officials of the county and its cities.<sup>3</sup> Further, it allows the county to use any forces to which the emergency management plan applies and to distribute any supplies, equipment, materials or facilities assembled, stockpiled, or arranged pursuant to these code sections.<sup>4</sup>

### **Authority of County during a State of Emergency.**

Counties can make, amend, and rescind orders, rules, and regulations as necessary for emergency management purposes and to carry out O.C.G.A. §§ 38-3-1 through 38-3-64.<sup>5</sup>

Commission meetings may be held at places other than the regular meeting place — even outside of the county, when it is not “prudent, expedient or possible to conduct meetings at the regular meeting place.”<sup>6</sup> Meetings may be called by the presiding officer or any two members of the board of commissioners without regard to or compliance with time-consuming procedures and formalities otherwise required by law.<sup>7</sup>

The “chief executive or executive body” of the county may enter into contracts or leases with the state, as well as equip and provide personnel to effectuate the agreement.<sup>8</sup>

Counties may appropriate and expend funds, execute contracts, and obtain and distribute equipment, materials, and supplies for emergency management purposes.<sup>9</sup>

Counties may provide emergency assistance to victims of emergencies.<sup>10</sup>

Counties may provide for the health and safety of persons and property.<sup>11</sup>

Counties may establish a primary command post, as well as secondary control centers.<sup>12</sup>

The “chief executive of the county” may order that the county provide employees, property, or equipment related to firefighting, engineering, rescue, health, medical,

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<sup>2</sup> O.C.G.A. § 38-3-51(b).

<sup>3</sup> O.C.G.A. § 38-3-51(b)

<sup>4</sup> O.C.G.A. § 38-3-51(b).

<sup>5</sup> O.C.G.A. § 38-3-28(a).

<sup>6</sup> See, O.C.G.A. § 38-3-54.

<sup>7</sup> See, O.C.G.A. § 38-3-54.

<sup>8</sup> O.C.G.A. § 38-3-25(b).

<sup>9</sup> O.C.G.A. § 38-3-27(b)(1).

<sup>10</sup> O.C.G.A. § 38-3-27(b)(2).

<sup>11</sup> O.C.G.A. § 38-3-27(b)(2).

<sup>12</sup> O.C.G.A. § 38-3-27(b)(4).

police, transportation, construction, and similar items and services for emergency management purposes within or outside of the county.<sup>13</sup> County employees working outside of the county have the same powers, duties, rights, privileges, and immunities as if they were working in their county of employment.<sup>14</sup>

Counties may receive gifts, grants and loans for services, equipment, supplies, materials, and funds to be used for emergency management purposes from the federal government or any person, firm or corporation.<sup>15</sup>

Counties may, by ordinance, provide a program requiring certain classes of business to register with the county before doing business in the county during a state of emergency.<sup>16</sup>

### **Authority of the State Related to County during Emergency.**

The Governor is authorized to:

- Direct local enforcement officers and agencies, as well as county health departments, as may be reasonable and necessary to obtain compliance with O.C.G.A. §§ 38-3-1 through 38-3-64.<sup>17</sup>
- Use services and facilities of county offices.<sup>18</sup>
- Direct the Georgia Department of Public Health to coordinate all matters in a public health emergency, including coordinating public health emergency responses between state and local authorities during a public health emergency.<sup>19</sup>
- Set up mobile support units to reinforce emergency management organizations in stricken areas.<sup>20</sup> If county personnel are used as part of these mobile support units, then the employees “have the powers, duties, rights, privileges, and immunities and receive the compensation incidental to their employment.”<sup>21</sup> The state is supposed to reimburse the county for the compensation paid to those county employees, as well as for actual and necessary travel, subsistence, and maintenance expenses of the county employees assigned to the mobile support units.<sup>22</sup> Additionally, the state is supposed to cover payments for death, disability, or injury of those employees incurred in the service of a mobile unit.<sup>23</sup> The state is also supposed to reimburse the county for losses or damage to county

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<sup>13</sup> O.C.G.A. § 38-3-27(b)(5).

<sup>14</sup> O.C.G.A. § 38-3-30.

<sup>15</sup> O.C.G.A. § 38-3-31.

<sup>16</sup> O.C.G.A. 38-3-56.

<sup>17</sup> O.C.G.A. § 38-3-22(a)(5) and (6).

<sup>18</sup> O.C.G.A. § 38-3-22(a)(7).

<sup>19</sup> O.C.G.A. § 38-3-51(i)(1)(B); see also, Ga. Rules and Regs. 511-9-1-.03(5).

<sup>20</sup> O.C.G.A. § 38-3-26(a).

<sup>21</sup> O.C.G.A. § 38-3-26(b)(2).

<sup>22</sup> O.C.G.A. § 38-3-26(c).

<sup>23</sup> O.C.G.A. § 38-3-26(c).

supplies and equipment.<sup>24</sup>

- Order counties to make employees, property, or equipment related to firefighting, engineering, rescue, health, medical, police, transportation, construction, and similar items and services available for emergency management purposes within or outside of the county.<sup>25</sup> County employees working outside of the county have the same powers, duties, rights, privileges, and immunities as if they were working in their county of employment.<sup>26</sup>
- Use all available resources of the counties as reasonably necessary to cope with the emergency.<sup>27</sup>
- Suspend the sale, dispensing, and transportation of alcoholic beverages, explosive or combustibles.<sup>28</sup>

GEMA may establish a statewide system to transport and distribute goods that are consumed or used as a direct result of the state of emergency or to preserve, protect, or sustain life, health, safety, or economic well-being.<sup>29</sup>

### **Authority of Public Health.**

Once a communicable disease dangerous to the public health is discovered, the Georgia Department of Public Health, which may coordinate efforts with the county board of health or the public health district staff,<sup>30</sup> has the authority to control the spread of disease through the powers set forth in Title 31 and Title 38.<sup>31</sup> Since the powers listed below may be used by the Department of Health and, in certain instances, the county board of health, include the issuance of administrative orders,<sup>32</sup> it is important to remember that since the county board of health has the option of utilizing the services of the county attorney,<sup>33</sup> who may be called upon to assist.

Public health has the authority to:

- Limit or Cancel Public Gatherings.<sup>34</sup>
- Impose Social Distancing.<sup>35</sup> Social distancing is the limiting or preventing of the spread of a disease, such a COVID-19, through measures, such as exclusion policies, isolation, quarantine, curfew, partial or complete closures of facilities,

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<sup>24</sup> O.C.G.A. § 38-3-26(c).

<sup>25</sup> O.C.G.A. § 38-3-27(b)(5).

<sup>26</sup> O.C.G.A. § 38-3-30.

<sup>27</sup> O.C.G.A. § 38-3-51(d)(2).

<sup>28</sup> O.C.G.A. § 38-3-51(d)(8).

<sup>29</sup> O.C.G.A. § 38-3-58(a) and (b).

<sup>30</sup> Ga. Rules and Regs. 511-9-1-.03(4)

<sup>31</sup> Ga. Rules and Regs. 511-9-1-.03(1).

<sup>32</sup> Ga. Rules and Regs. 511-9-1-.03(3) and 511-9-1-.04(e)

<sup>33</sup> O.C.G.A. § 31-3-10.

<sup>34</sup> Ga. Rules and Regs. 511-9-1-.03(2)(f).

<sup>35</sup> Ga. Rules and Regs. 511-9-1-.03(1) and 511-9-1-.04(1).

including public, and restricting the movement, including the closing of borders.<sup>36</sup> Social distancing measures may be taken voluntarily or pursuant to an administrative or judicial order.<sup>37</sup>

- Restrict Travel into or within the State.<sup>38</sup>
- Impose Isolation. An individual infected with a communicable disease, such as COVID-19, and likely to endanger the health of others, may be separated, confined or restricted from the movement until he or she is free of the disease.<sup>39</sup>

A written administrative isolation order may be issued when voluntary measures are impracticable or ineffective.<sup>40</sup> They are effective upon issuance.<sup>41</sup> The procedures for an administrative order for isolation, as well as appeals, are contained in Ga. Rules and Regs. 511-9-1-.05. An isolation order may require confinement to a residence, medical facilities, or non-medical facilities.<sup>42</sup> Whether an individual's home is suitable for isolation is in the discretion of the Georgia Department of Public Health or the county board of health.<sup>43</sup> The order may place restrictions on travel and behavior, including prohibiting an individual from going to certain places, such as school, work, public conveyances and other places where the public may be.<sup>44</sup> Finally, the order may also require an individual to self-monitor and report certain conditions, such as body temperature.<sup>45</sup>

- Impose Quarantine. An individual who was or may have been exposed to a communicable disease, such as COVID-19, may be required to be separated, confined, or restricted in movement.<sup>46</sup> A written administrative quarantine order may be issued when voluntary measures are impracticable or ineffective.<sup>47</sup> They are effective upon issuance.<sup>48</sup> A quarantine order may require confinement to a residence, medical facilities, or non-medical facilities.<sup>49</sup> Whether an individual's home is suitable for quarantine is in the discretion of the Georgia Department of Public Health or the county board of health.<sup>50</sup> The order may place restrictions

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<sup>36</sup> Ga. Rules and Regs. 511-9-1-.02(13).

<sup>37</sup> Ga. Rules and Regs. 511-9-1-.02(13).

<sup>38</sup> Ga. Rules and Regs. 511-9-1-.03(2)(e)

<sup>39</sup> Ga. Rules and Regs. 511-9-1-.02(07), 511-9-1-.03(2)(a) and 511-9-1-.04(2)(a).

<sup>40</sup> Ga. Rules and Regs. 511-9-1-.05(1)(a).

<sup>41</sup> Ga. Rules and Regs. 511-9-1-.05(1)(a).

<sup>42</sup> Ga. Rules and Regs. 511-9-1-.05(1)(b).

<sup>43</sup> Ga. Rules and Regs. 511-9-1-.05(1)(f).

<sup>44</sup> Ga. Rules and Regs. 511-9-1-.05(1)(b).

<sup>45</sup> Ga. Rules and Regs. 511-9-1-.05(1)(b).

<sup>46</sup> Ga. Rules and Regs. 511-9-1-.02(12), 511-9-1-.03(2)(b), and 511-9-1-.04(2)(c).

<sup>47</sup> Ga. Rules and Regs. 511-9-1-.05(1)(a).

<sup>48</sup> Ga. Rules and Regs. 511-9-1-.05(1)(a).

<sup>49</sup> Ga. Rules and Regs. 511-9-1-.05(1)(b).

<sup>50</sup> Ga. Rules and Regs. 511-9-1-.05(1)(f).

on travel and behavior, including prohibiting an individual from going to certain places, such as school, work, public conveyances and other places where the public may be.<sup>51</sup> Finally, the order may also require an individual to self-monitor and report certain conditions, such as body temperature.<sup>52</sup>

The procedures for an administrative order for quarantine and appeals from the order are contained in Ga. Rules and Regs. 511-9-1-.05. Additionally, there are statutes that also control the procedure. In a public health emergency where quarantine orders are issued, there are due process and appeal procedures that must be observed, including access to counsel, a challenge in superior court, and an immediate appeal to the Georgia Supreme Court.<sup>53</sup> The Georgia Supreme Court's Declaration of Judicial Emergency states that court proceedings should be held in a manner to limit the risk of exposure, such as video conferencing.<sup>54</sup> Coordination between the county health department and the superior court should be taken to find a way to conduct any hearings in a way to contain exposure to the extent possible. Finally, since the county board of health has the option of utilizing the services of the county attorney,<sup>55</sup> it is important to note that the burden of proof is on the "state" to show by a preponderance of evidence that there is a substantial risk of exposing other individuals to imminent danger.<sup>56</sup> The rules of evidence for civil cases are used.<sup>57</sup> All parties have the right to subpoena and cross examine witnesses.<sup>58</sup> The superior court judge may uphold or suspend the quarantine order, which shall be automatically stayed for 48 hours.<sup>59</sup> Either party may immediately appeal an order to the Georgia Supreme Court, which will consider the appeal on an expedited basis.<sup>60</sup>

- Close, Evacuate or Decontaminate. Any facility reasonably suspected to pose a danger to public health may be closed, evacuated, decontaminated and any contaminated materials destroyed.<sup>61</sup>
- Require Vaccination, Examination and Treatment.<sup>62</sup>

### **Additional Considerations.**

There is an important duty that applies to the "position of head of any and all departments, agencies, boards, or commissions of...the [counties];...all constitutional and other county offices; all of the judgeships of the...[counties]; and all of the positions

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<sup>51</sup> Ga. Rules and Regs. 511-9-1-.05(1)(b).

<sup>52</sup> Ga. Rules and Regs. 511-9-1-.05(1)(b).

<sup>53</sup> O.C.G.A. § 38-3-51(i)(2).

<sup>54</sup> Order Declaring Statewide Judicial Emergency (Amended), Supreme Court of Georgia (March 14, 2020).

<sup>55</sup> O.C.G.A. § 31-3-10.

<sup>56</sup> O.C.G.A. § 38-3-51(i)(2)(B).

<sup>57</sup> O.C.G.A. § 38-3-51(i)(2)(C).

<sup>58</sup> O.C.G.A. § 38-3-51(i)(2)(C).

<sup>59</sup> O.C.G.A. § 38-3-51(i)(2)(D).

<sup>60</sup> O.C.G.A. § 38-3-51(i)(2)(E).

<sup>61</sup> Ga. Rules and Regs. 511-9-1-.03(2)(g) and 511-9-1-.04(d)

<sup>62</sup> Ga. Rules and Regs. 511-9-1-.03(2)(d) and 511-9-1-.04(2)(d)

in the legislative department of the ...[counties]”<sup>63</sup> Each of these officers is supposed to designate an emergency interim successor to serve until a successor is appointed in case he or she is unable to discharge his or her duties.<sup>64</sup> Within 30 days of taking office, constitutional officers are required to designate by title the individual designated to serve as emergency interim successors, specifying the order of succession.<sup>65</sup> Designation of emergency interim successors becomes official when the officer files his or her list of successors with the Secretary of State.<sup>66</sup> “The legislative bodies of all” counties are required to adopt an ordinance or resolution for “emergency interim successors for the officers of the political subdivision.”<sup>67</sup> The emergency interim successor must have the same qualifications prescribed by law for the officer for whom they are designated<sup>68</sup> and are entitled to the same compensation as the officer who appointed them, but only while providing those emergency interim successor duties.<sup>69</sup> An emergency interim successor must take whatever oath is required to exercise the powers and discharge the duties of the office that they may succeed to at the time of his or her designation.<sup>70</sup>

The county is not liable for personal injury or property damage sustained by any person appointed or acting as a volunteer emergency management worker or member engaged in emergency management activity.<sup>71</sup> The individual may still receive workers compensation benefits, pension benefits, benefits under O.C.G.A. § 38-3-30 or federal law.<sup>72</sup>

Neither the county nor, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the county, nor any volunteer or auxiliary emergency management worker or member of any agency engaged in any emergency management activity complying with or reasonably attempting to comply with (1) O.C.G.A. §§ 38-3-1 through 38-3-64; or, (2) any order, rule, or regulation promulgated pursuant to that Code chapter, or (3) pursuant to any ordinance relating to precautionary measures enacted by any county under that Code chapter, or (4) pursuant to any ordinance relating to precautionary measures enacted by any political subdivision of the state shall be liable for the death of or the injury to person or for damage to property as a result of any such activity.<sup>73</sup>

When any person, firm or corporation allows their property to be used by a county emergency management agency without charge to shelter people during an emergency, that property owner has the same sovereign immunity as the state during the times that

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<sup>63</sup> O.C.G.A. § 38-3-50(a)(5).

<sup>64</sup> O.C.G.A. § 38-3-50(a)(3) and (e).

<sup>65</sup> O.C.G.A. § 38-3-50(e).

<sup>66</sup> O.C.G.A. § 38-3-50(d) and (e).

<sup>67</sup> O.C.G.A. § 38-3-50(f).

<sup>68</sup> O.C.G.A. § 38-3-50(c).

<sup>69</sup> O.C.G.A. § 38-3-50(h).

<sup>70</sup> O.C.G.A. § 38-3-50(g).

<sup>71</sup> O.C.G.A. § 38-3-35(a).

<sup>72</sup> O.C.G.A. § 38-3-35(a).

<sup>73</sup> O.C.G.A. § 38-3-35(b).

the premises are actually occupied and used.<sup>74</sup> No civil lawsuit may be brought against the property owner for damages for personal injuries or death or loss or destruction of personal property brought onto the premises by a person seeking shelter.<sup>75</sup>

Any person providing equipment to the county at no cost during an emergency will not be held liable for any civil damages resulting from any act or omission of the person who provided the equipment.<sup>76</sup>

### **Enforcement and Penalty.**

State, county, and certain municipal law enforcement are required to enforce the orders, rules, and regulations issued pursuant to O.C.G.A. §§ 38-3-1 through 38-3-64.<sup>77</sup>

Obviously, these orders, rules and regulations must be consistent with those statutes, as well as any orders, rules, and regulations issued by the state and federal governments.<sup>78</sup> In order to have the force of law, any such orders, rules, or regulations must be filed in the office of the county clerk.<sup>79</sup>

The GEMA Director and “any person, corporation, firm or association” may obtain an injunction to restrain violation of O.C.G.A. §§ 38-3-1 through 38-3-64, in addition to any other remedies at law.<sup>80</sup> Since O.C.G.A. §§ 38-3-1 through 38-3-64 are to be construed liberally to effectuate their purpose,<sup>81</sup> it appears that the “any person” reference noted above could include a county attorney. Additionally, injunctions may be obtained on behalf of the county health department for any violation of Title 31,<sup>82</sup> including rules and regulations adopted by the county board of health<sup>83</sup> and required by the Georgia Department of Public Health that apply to that county.<sup>84</sup> The county board of health has the option of utilizing the service of the county attorney.<sup>85</sup>

Violation of O.C.G.A. §§ 38-3-1 through 38-3-64 or any order, rule, or regulation related to the emergency from the state or county<sup>86</sup> is a misdemeanor.<sup>87</sup>

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<sup>74</sup> O.C.G.A. § 38-3-32.

<sup>75</sup> O.C.G.A. § 38-3-32.

<sup>76</sup> O.C.G.A. § 38-3-33.

<sup>77</sup> O.C.G.A. § 38-3-4.

<sup>78</sup> See, O.C.G.A. § 38-3-28.

<sup>79</sup> O.C.G.A. § 38-3-28(b).

<sup>80</sup> O.C.G.A. § 38-3-5.

<sup>81</sup> See, O.C.G.A. § 38-3-6

<sup>82</sup> O.C.G.A. § 31-5-9(a).

<sup>83</sup> See, O.C.G.A. § 31-3-6; see also, O.C.G.A. § 31-5-3.

<sup>84</sup> O.C.G.A. § 31-3-5(a)(3); see also, O.C.G.A. § 31-5-3.

<sup>85</sup> O.C.G.A. § 31-3-10.

<sup>86</sup> O.C.G.A. § 38-3-4(b).

<sup>87</sup> O.C.G.A. § 38-3-7.

## **Conditions of State Financial Assistance.**

Some of the requirements for a county to obtain state funds, if appropriated by the General Assembly, to counties are included in:

O.C.G.A. 38-3-27(c)-(f)

O.C.G.A. 38-3-31

O.C.G.A. 38-3-57(d) and (e).

## **Prohibited Activities.**

Counties may not temporarily or permanently seize, prohibit possession, or prohibit a license holder from carrying any firearm or ammunition or component thereof that was not prohibited by law before the declaration.<sup>88</sup>

Any corporation or entity that is primarily engaged in the broadcasting of video or audio programming designated as a first response broadcaster may not have vehicles, fuel, food, water, or any other materials seized or condemned that are essential for producing a broadcast or broadcasting signal.<sup>89</sup> Additionally, subject to GEMA regulation, first response broadcasters may have access to areas impacted by an emergency to repair facilities or equipment critical to the ability of a broadcaster to acquire, produce, or transmit emergency related programming, as well as have access to the distribution of fuel, food, water, supplies, equipment, and other materials necessary for producing a broadcast or broadcasting signal.<sup>90</sup>

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<sup>88</sup> O.C.G.A. § 38-3-37.

<sup>89</sup> O.C.G.A. § 38-3-57(f)(2)(c).

<sup>90</sup> O.C.G.A. § 38-3-57(f)(2).

## Federal Declaration of Emergency

The ACCG Legal Department has not researched whether the [Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease \(COVID-19\) Outbreak](#) issued on March 13, 2020 triggers federal reimbursement to counties. This issue will be examined at a later time.

Prior experience with federal declaration of emergency has been for hurricanes, tornados, floods, and snow events. In those cases, when the President made a declaration of emergency (sometimes referred to as a “federal declaration” or “disaster declaration”), it allowed FEMA to use its resources to help manage the emergency and allows other federal agencies to offer assistance in areas included in the declaration. In such a case, the citizens and businesses in any county included in the declaration had access to federal grants and low interest loans. Any county included in the declaration could be reimbursed some of the costs of recovering from the disaster through FEMA. However, county commissioners had to be prepared to pay up front for emergency services, because of a delay in the declaration. Even in cases of no such delay, reimbursement could take several months, or even years, to be processed.

In order to be eligible for FEMA reimbursement, counties must comply with several requirements that necessitate good record keeping. FEMA generally requires counties to comply with county established procedures while responding to an emergency.<sup>91</sup> In the midst of a disaster, there may not be time to bid out emergency supplies or services according to the county’s regular purchasing ordinance or policy. If the county has an established exception in its ordinances for emergency purchases and the county follows it when buying emergency supplies, the county may be entitled to FEMA reimbursement. If the county does not have an exception and does not follow its regular procedures, then it may be very difficult to receive FEMA reimbursement.

FEMA also requires that a mutual aid agreement be in effect in order to reimburse the county for money paid to other governmental entities for assistance during an emergency.

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<sup>91</sup> See, for example, 44 CFR Part 13; [FEMA Public Assistance Program and Policy Guide, FP 104-009-2, January 2016](#); FEMA Procurement Under Grants Public Assistance Policy website, <http://www.fema.gov/media-library/assets/documents/96773> (accessed July 12, 2016)