

# Chapter 1

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## Introduction

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Disasters continue to increase worldwide: pandemics, wildfires, hurricanes, tornadoes, earthquakes, tsunamis, drought, floods, and pestilence. These realities, coupled with the recent increased attention to the ideas of climate variability, sustainability, environmental management, business continuity, and organizational resilience offer the legal, architectural, and engineering communities both unique challenges and opportunities to raise awareness about preventing disasters through community-based actions. These community-based initiatives are promoted by lawyers, law firms, bar associations, and other professional associations, such as the American Institute of Architects (AIA), the American Society of Civil Engineers (ASCE), and the Natural Hazard Mitigation Association (NHMA). They are designed to strengthen the social institutions that define the community, encourage resilient design and construction, and take disasters as opportunities to bounce forward to a more just, safe, and resilient nation.<sup>1</sup>

The term *resilience* is used in a variety of ways in numerous disciplines.<sup>2</sup> Within the context of disaster preparedness,

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1. Publications from the Island Press Urban Resilience Project describe the concept of bouncing forward; they include *Bounce Forward: Urban Resilience in the Era of Climate Change* and *Resilience Matters: Action in an Age of Uncertainty*.

2. For examples, see Chapter 18, “Building More Resilient Communities: Defining Community Resilience, The Power of Local, Increasing Disaster Resilience Capabilities and Beyond Disaster Resilience” by Lynnda M. Nelson, in this book, and SHELLEY ROSS SAXER & JONATHAN ROSENBLUM, *SOCIAL-ECOLOGICAL RESILIENCE AND SUSTAINABILITY* (2018).

resilience is used to describe activities conducted by some communities as a part of preparedness. One “proven process” offers this definition: “Community resilience is the ability to prepare for anticipated hazards, adapt to changing conditions, and withstand and recover rapidly from disruptions. Activities, such as disaster preparedness—which includes prevention, protection, mitigation, response, and recovery—are key steps to resilience.”<sup>3</sup> Here “adaptation” refers to preparing for conditions that may occur in the lifetime of a physical facility or infrastructure system. In a more resilient community, a hazard event that occurs at the intensity for which the affected structures were designed, using the relevant codes and standards, may cause local disruptions that the community tolerates without long-term detrimental effects, such as the permanent relocation of residents or businesses.

In recognition of the continuous and growing occurrence of natural, technological, and human-caused disasters, and the financial and social impact on communities, governments, businesses, the nonprofit sector, and the legal community are urged to adopt standards, guidance, programs, proven processes, and best practices, and to consider regulatory systems that will make communities more resilient to loss and damage from foreseeable hazards. Lawyers and law firms; federal, state, local, and specialty bar associations; as well as associations for design professionals need guidance to be better prepared, active participants in, and advocates for, community resilience initiatives, while recognizing the legal, financial, and environmental interests of citizens.

In a perfect world, American jurisdictions, communities, and their business organizations would be comfortably dependent on physical and organizational infrastructures that are built to recover quickly from major disasters with little disruption to those who are dependent on them. There would be no need to

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3. NIST SPECIAL PUBLICATION 1190, COMMUNITY RESILIENCE PLANNING GUIDE FOR BUILDINGS AND INFRASTRUCTURE SYSTEMS, Vol. 1, Introduction 9 (2015). This definition is consistent with presidential policy directives and FEMA’s guidance.

develop a resilience plan that recognizes the vulnerabilities and risks to the built environments, and determines the impacts that the resulting damages will have to the social institutions that define the community, and where planning activities, short-term repairs, and long-term mitigation are needed to enable a quicker recovery.

Unfortunately, this is never the case. In any mature community, the buildings and supporting infrastructures have been built over many generations and are the victims of inadequate design, changing demands, and constant deterioration. Standards used for design and construction are constantly being improved and updated to reflect new materials, methods, and technologies as well as appreciations of the size and severity of the coming hazard events and how best to design for them. Many existing structures and systems are outdated; only the newest facilities and systems have a chance of contributing to a community's resilience. Considerations for the built environment must be incorporated into a community's resilience planning.

## What Is Community Resilience?

The English-language word "community" derives from the Latin *communitas*, and "public spirit" from Latin *communis*, "shared in common." Human communities may share intents, beliefs, resources, preferences, needs, and risks in common, affecting the identity of the participants and their degree of cohesiveness. Shared values are the principal source of strength for the whole community and must be consciously nurtured. Building the culture of continuity into the community systematically over the long term requires embedding the strategy of resilience into the community and its organizations purposefully in the short term. The culture of continuity is a product of change management that is an integral part of the strategy of community resilience.

Communities cannot afford merely to retrofit their built environments to modern standards, nor should they. Not every building or infrastructure system is needed immediately after a disaster occurs. What counts is whether they are available when needed to support recovery. Hospitals are needed immediately

to care for the sick and injured, but recreation centers can wait until people have time to use them or until they may be adapted for more urgent uses during the response and recovery. Schools need to reopen as soon as possible, but not before the emergency response phase is over and families are settled. Communities would do well to plan to take advantage of the time that is available to repair their built environments and support business continuity both by careful planning prior to disasters as well as after a disaster occurs. They do this by determining when various components are needed along with how long it will take to prepare them.

Community resilience affects all elements of the community, and ideally all sectors will be involved in its planning and execution. Many experts believe that private sector businesses at the heart of a community's economic base also are at the heart of its resilience. The survival of the community depends on the resilience of its businesses and the strength of the culture of continuity. Because community resilience is a risk-based, analytical planning activity that addresses the community's industries, organizations, and built environments, the identification and selection of cost-effective strategies, leading to short-term and long-term solutions, must involve a multidisciplinary approach. This broad-based approach helps to build the culture of continuity over the long term.

This book draws together the contributions of acknowledged experts from the legal community, and from across a spectrum of other professional disciplines, including architecture, disaster risk reduction, engineering, social science, insurance, finance and economics, building sciences, and facility management. The result is a multidisciplinary approach to a complex challenge that goes to the heart of who we are, how we live, what we value, and whether we survive. When used in connection with other planning tools, it brings a unique and realistic perspective to what is needed from the professional community and the built environment to accelerate recovery from any natural or man-made disaster, and what steps can be taken to continuously improve resilience over the long term.

## The American Bar Association and Community Resilience

The national dialogue on community resilience has highlighted the need for all us who live and work in the United States of America to come together, across any divide of politics or other divisive factor, to create communities that are more capable of resisting and, if necessary, quickly recovering from natural disasters and other extreme events. The events of 9/11 made all Americans aware of the impact of terrorism and made the legal community aware of the impact of catastrophic loss on the judicial systems. Subsequent extreme events, such as the current COVID-19 pandemic and Hurricanes Katrina and Sandy, convinced Americans of the foreseeable threats to, and vulnerabilities of, the whole community. The American legal community, lawyers and law firms, sought a unified, proactive approach to disaster preparedness and response. In February 2017, American Bar Association's (ABA's) House of Delegates unanimously voted to adopt Resolution 108 and its report in support of community resilience initiatives as the ABA's official policy (see Appendix A).

This policy resolution is a call to action to lawyers, law firms, and bar associations (the "legal community") that is designed to create greater awareness of community resilience initiatives and engage the members of the legal profession as civic leaders, key stakeholders, and representatives of the community's social and economic institutions. Private sector organizations focus on business continuity, and public entities see a very big picture of their communities in terms of systems. We have included chapters authored by design professionals with the goal of learning from their perspectives as well as encouraging these professions to learn about the legal aspects of community resilience.

## The Structure of This Book

This book is organized into four parts, recognizing the very different components and aspects of resilience that form the structure that supports the whole community. Part 1: Understanding

the Structure of Community Resilience addresses the issues of definition, leadership, and governance in community resilience on the topics of planning and preparedness.

### ***Part I: Understanding the Structure of Community Resilience***

In Chapter 2, “Understanding What It Means to Be Resilient,” Rachel Minnery, AIA, describes the concepts, perspectives, and frameworks of, and goal-setting for, community resilience based on impacts on the built environment that are recognized by the licensed design professionals, as well as environmental and sustainability movements. The theme of Minnery’s comprehensive discussion is that the actions of the community, by way of planning and preparedness, to confront expected impacts resulting from its vulnerability or lack thereof, will directly determine if it is resilient and adaptable. The author concludes that we must look to new policies, programs, and practices that consider current and future consequences of hazard events, and the behaviors that contribute to them if our communities are to increase their resilience.

In Chapter 3, “The Basics of Prevention, Protection, Mitigation, Response, and Recovery,” Donna Boyce and Chuck Wallace provide a concise and practical local practitioner-based introduction to understanding the complex concept of prevention and protection mitigation in responding to and recovering from disasters in a manner designed to achieve disaster risk reduction. They begin with a description of the concept of community resilience and then describe the roles of the whole community, with special attention to the role of attorneys, in actually achieving a resilient community through community-based planning and action using all available resources, including the Natural Hazard Mitigation Association’s Disaster Risk Reduction Curriculum, the National Institutes of Standards and Technology Community Resilience Project, as well as a host of other government publications.

In Chapter 4, “Understanding Threat and Hazard Identification and Risk Assessment,” Nancy McNabb, AIA, explains the