

INFORMATION CONCERNING CLAIMS UNDER THE EVACUATION CLAIMS LAW

The following information was prepared by Edward J. Ennis, special JACL ADC counsel, and released by the Washington Office of the JACL Anti-Discrimination Committee as a public service to aid all evacuee-claimants in filing their claims with the Department of Justice.

* * *

ANALYSIS OF PUBLIC LAW 886

Section 1 of the Evacuation Claims Act, approved July 2, 1948 (Public Law 886), permits all persons of Japanese ancestry to file claims, for "damage to or loss of real or personal property — that is the natural or reasonable consequence of the evacuation or expulsion of such persons from a military area in Arizona, California, Oregon, Washington, Alaska, and Hawaii." The purpose of this Act is to pay such persons for their property losses which were caused by evacuation.

Section 2 of the Act provides that the Attorney General shall receive claims for a period of 18 months from the enactment of the law, or until January 2, 1950.

Section 2 of the Act also provides that the Attorney General shall not consider any claims

- (1) by a person voluntarily or involuntarily deported from the United States to Japan, or not a resident of the United States on December 7, 1941;
- (2) for loss or damage by action taken under the Alien Enemy Act or the Trading with the Enemy Act;
- (3) for damage or loss to property vested pursuant to the Trading with the Enemy Act;
- (4) for damage or loss on account of death or personal injury, personal inconvenience, physical hardship, or mental suffering; and
- (5) for loss of anticipated profits or loss of anticipated earnings.

Section 3 of the Act provides that the interested parties shall have a hearing to present evidence before the final determination of a claim.

Section 4 of the Act authorizes the Attorney General to pay any award made by him not exceeding \$2500. Claims in larger amounts without limitation may also be filed and awards in any amount may be made by the Attorney General. However, all awards of *more than \$2500* must be submitted to Congress for specific approval before they can be paid.

Section 5 of the Act provides that the Attorney General may allow reasonable attorneys' fees to be paid out of the award but not in excess of ten percent of the award. Under severe penalty, this section forbids an attorney to charge more than the ten percent allowed if recovery is obtained.

WHO MAY FILE CLAIMS

1. *Corporations.* The law states that the Attorney General shall consider any claim by persons of Japanese ancestry. In view of this language, it would appear that a claim for property owned by a corporation at the time of the loss or damage should be filed by the stockholders of Japanese ancestry, stating that they are stockholders of the corporation which was the owner of the property.

To date, no ruling has been made by the Department of Justice whether a corporation wholly or partially owned by persons of Japanese ancestry might file a claim in its own name for loss or damage suffered by their stockholders because of the loss of the corporation resulting from the evacuation. If, in the future any such ruling is made, claimants may obtain the information from local JACL offices. In the meantime, it is suggested that claims may be filed by the stockholders of Japanese ancestry.

2. *Partnerships.* As in the case of corporations, it is believed that the individual partners should file individual claims, giving the names and addresses of the known partners, the percent of interest of the claimant in the partnership, the total loss suffered by the partnership because of evacuation, and the loss suffered by the claimant himself. For the convenience of the Department of Justice, it is recommended that wherever possible the claims of all partners to an enterprise file their respective claims together or at the same time.

3. *Internees.* The law permits persons of Japanese ancestry who were interned to file a claim for loss suffered *as a result of evacuation*. The law, however, forbids the consideration of claims for any loss caused by internment. An internee who files a claim will be required to show that the loss or damage was caused not by internment but by the evacuation. In many cases, apparently, loss or damage to property of the internees was due not to internment but to the evacuation which prevented the internee's family from giving such thorough protection to the property as they might have provided had no evacuation taken place. This is made clear when it is remembered that the families of German and Italian internees remained behind and consequently did not suffer losses to the extent that Japanese internees suffered.

4. *Heirs.* Although the law does not expressly deal with the question of deceased claimants, it is believed that the executor or the administrator of the estate of the deceased claimant, or the heirs at law, may file the claim on behalf of the deceased claimant.

5. *Legal owners.* The person who sustained the loss should file the claim and ordinarily this means that the claim should be filed by the person who is the legal owner of the property. In case of property used in common by a family, the head of the family should file the claim except for property which is actually owned in the name of another member of the family. For example, the family automobile might be

owned in the name of the son and might have been sold at the time of evacuation for less than its value. It is suggested that such claims should be filed by the son who was the legal owner.

The head of the family should not divide his claim into equitable shares and permit his children to file for individual shares.

6. *Community Property.* In case of loss of community property owned by a husband and wife in states having community property laws, it is believed that it is sufficient for the husband to sign the claim.

* * *

MAKING OUT A CLAIM

Claims must be filed on the official form issued by the United States Department of Justice. The claimant may obtain the official form by calling at the nearest office of the JACL or by writing the Washington Office of the JACL ADC, 300 Fifth Street, N. E., Washington 2, D. C., or from the local office of the United States Attorney or by writing directly to the Department of Justice, Washington 25, D. C. In addition to the official form, the claimant may also obtain free of charge from the nearest JACL, a copy of the law itself and some suggestions concerning real or personal property lost or damaged in the evacuation which may be claimed under the law, and Japanese translations of the form, law and other information.

Since the Department of Justice intends that claimants receive only one copy of the official form, it is recommended that carbons of the official form as filed be made and retained for future reference purposes.

* * *

FILING THE CLAIM

When the claim is filled out completely and signed by the claimant, it should be sent directly to the Attorney General, Department of Justice, Washington 25, D. C.

* * *

ASSISTANCE IN PREPARING CLAIMS

The local chapters of the JACL will make the official claims form available to all who desire them, and will supply all necessary Japanese translations. In addition, the JACL will make available information that may be of service to the claimant. It will also provide stenographic assistance to any claimant who requests this service. The JACL, however, cannot give legal or accounting advice concerning rules or method of determining the values of property lost or damaged. In cases where substantial loss or damage is to be claimed, it is recommended that the claimant consult his own attorney or accountant or other person who is qualified to give him the necessary professional assistance. The law restricts the compensation of any attorney to the amount awarded by the Attorney General not to exceed ten percent of the award if recovery is obtained.

* * *

PENALTIES FOR PERJURY

Claimants should be aware that there are very severe penalties for willful false statements to the Government, ranging up to five years imprisonment and \$10,000 fine.

* * *

QUESTIONS 1 to 4

The question on the first page of the form are intended to disclose to the Government that the claimant is a person of Japanese ancestry, because under the law only persons of Japanese ancestry are qualified to file a claim. For this reason, the claimant is required to state the place of his birth and also the birthplace of his parents. It may be well for *Sansei* claimants to list the names and birthplace of their grandparents as well.

* * *

QUESTIONS 5 to 12

These questions are designed to enable the Department of Justice to determine the eligibility of the claimant. For example, in the case of a person who had been interned, the Department will be alerted to check that the loss claimed was actually from evacuation and not by reason of internment. Under question 6, the claim of a person who had been voluntarily or involuntarily deported from the United States to Japan would be rejected, as would that person whose residence on December 7, 1941, as shown in question 7, was not actually in the United States.

Questions 8 through 12 further tie down the fact of evacuation by showing the military area, date of evacuation, residence on date of evacuation, and whether the claimant was evacuated, excluded or deported voluntarily. In the case of voluntary evacuees, question 11 seeks to determine the reason for leaving the military area, presumably to make certain that the departure was directly the result of the evacuation orders.

If information is lacking concerning the military area, exclusion area, or date of evacuation or exclusion, the nearest JACL office will be able to advise you concerning these matters.

* * *

DISCRIPTION OF THE CLAIM

The third page of the form provides space for stating your claim in complete detail. If there is not enough space to complete the statement of your claim, or to answer any other question, additional pages may be used and clipped to the official form. Moreover, since the Government desires to consider your entire claim at one time, all items which you intend to claim — household, personal, and business losses — should be included in this space.

The properties lost or damaged should be identified and the circumstances of the loss described to show that the loss or damage was due to the evacuation, exclusion or departure from a military area, and not to other causes. You should state the cost of the property lost or damaged and its value at the time of the loss or damage and give any other information which would be useful in determining the validity and the amount of your claim.

As a public service, the JACL has prepared a list of the types of real and personal property for which loss or damage may be claimed. This list is merely suggestive and is not intended to exclude other types of property. It may be obtained, together with a Japanese translation if needed, from the nearest JACL office.

* * *

QUESTIONS 13 to 17

The answer to the questions on the form, after the statement of the claim, will give the Department of Justice other information that will be of assistance in adjudicating the claim.

Question 15 requires a statement as to whether other persons have interests in the property lost or damaged which you now claim in whole or in part. The Government desires to have all the information possible concerning the claims made for loss or damage to one piece of property.

Question 16 requires the claimant to describe any documents that he may have in support of his claim, but specifically asks that the documents *not* be sent to the Department with the claim at time of filing. These documents should be kept by the claimant until the Department of Justice calls for them.

* * *

HEARING OF CLAIMS

The Department of Justice has not yet announced the places or the manner in which hearings will be held. It is believed that the procedures will not be announced until the Department of Justice has received several thousand claims in order that the Attorney General may first determine which hearing procedure will be most useful for the kinds of claims which are filed. It is hoped that the Department of Justice will determine that each claim should be heard at the place where the claimant resides or where the loss occurred, at the option of the claimant.

NOTE: If you believe that you have an honest and legitimate claim, file your claim for the full amount that you believe to have been the loss or damage to your property.

Do not, however, expect immediate payment. For it will be some time before even the smaller claims can be paid.

Moreover, the amount awarded will be decided by the Department of Justice and the mere filing of a claim does not assure the award of the full amount claimed. Such award may be equal to or less than the amount claimed.

Some Suggestions Concerning Types of Real and Personal Property Lost or Damaged in Evacuation Which May Be Claimed Under the Law

* * *

The Evacuation Claims Act of July 2, 1948 (Public Law 886) permits persons of Japanese ancestry to file claims for "damage to or loss of real or personal property — that is the reasonable and natural consequence of the evacuation or exclusion of such persons from a military area."

The following list of common types of real and personal property lost or damaged in the evacuation was prepared by Edward J. Ennis, special JACL ADC counsel, and released by the Washington Office of the JACL Anti-Discrimination Committee as a public service to assist persons who suffered such losses and desire to file claims under the Act.

This list is not exhaustive and claims may be filed for losses or damage to real or personal property not mentioned in this listing. The law refers to all real or personal property lost or damaged by the evacuation or exclusion of the owner of the property. This list merely suggests some of the more common types of real and personal property lost or damaged in the evacuation which may be claimable under the law.

The statute does not define the types and kinds of losses or damage which are recoverable and, therefore, determinations will have to be made by the Department of Justice from time to time as to what items are recoverable and what are not. For example, claims may be entered for expenses incurred in connection with evacuation, such as travel expenses, and other fees paid in efforts to protect or sell property, the cost of clothing and other necessities purchased expressly for evacuation, and special added living costs, and a determination will have to be made as to whether such losses are legitimate items which may be claimed.

Losses of this type, as well as those caused by the sacrifice sales of property, damaged or mismanaged property, or theft of property are included in this list because the congressional hearings in respect to this law indicate that it was the intention of Congress to repay the evacuees and excludées for the property losses they actually suffered.

As official determinations are made by the Department of Justice, the JACL ADC will undertake to publicize these decisions in the public interest.

- I. Loss or damage to Business Property
 - A. Real Property and Similar Property
 1. Losses at time of evacuation.
 - a. Losses due to forced sale of property at less than fair value.
 - b. Losses due to abandonment of real estate or leases.
 - c. Costs of material and labor expended to protect property or to close up a business.

- d. Commissions and fees paid to persons to operate property and businesses.
- e. Travel expenses and other losses incurred in connection with any special activities required because of evacuation.
- 2. Losses during the period of evacuation and exclusion.
 - a. Damage to property by theft, vandalism, storms, fire, and excessive wear and tear by tenants, not covered by insurance.
 - b. Loss due to foreclosure or tax sales.
 - c. Damage to orchards, vineyards and fertility of farmland due to improper use by tenants.
 - d. The cost of caretakers and other services.

B. Personal Property

- 1. Losses at time of evacuation.
 - a. Losses due to forced sale of property at less than fair value.
 - b. Losses due to abandonment of personal property.
 - c. Loss of accounts receivable not collectible because the debtors were evacuated and unable to pay or because creditor was unable to collect because of his evacuation or exclusion.
 - d. Cost of moving and storing personal property including fixtures, tools, stock and trade and all other personal property.
 - e. Loss of the value of personal property used in the business including some goodwill value.
- 2. Losses during the period of evacuation and exclusion.
 - a. Damage to personal property by theft, vandalism, fire, weather or excessive wear and tear by tenants.
 - b. Loss of accounts receivable which become due during this period and are not collectible due to evacuation or exclusion.
 - c. Loss due to foreclosure of chattel mortgages on automobile, farm equipment, household appliances and other personal property.
 - d. Losses on insurance policies due to inability to pay premiums where the inability to pay can be shown to be due to the evacuation or exclusion.
 - e. Interest lost on bank deposits and investments which had to be liquidated because of evacuation or exclusion.
 - f. Legal and other expenses caused directly by the evacuation or exclusion, including travel expenses, special clothing, etc.

II. Loss or Damage to Household Property

A. Real Property and Similar Property

- 1. Loss at time of evacuation.
 - a. As in the case of business property losses due to forced sale or abandonment of a home and the cost of material and labor expended to close up the home or protect it during the period of exclusion may be claimed.

- b. As in the case of business property legal expenses and other fees and travel expenses and other expenses in connection with the selling or protecting property may be claimed.
2. Losses During Period of Evacuation and Exclusion.
 - a. As in the case of business property mentioned above damage and loss due to theft, vandalism or other losses due to evacuation and not covered by insurance on the home may be claimed.
 - b. Other expenses incurred during the period of exclusion may be claimed.
- B. Personal Property**
1. Losses at time of evacuation.
 - a. Losses due to the forced sale or abandonment of household equipment of all kinds may be claimed.
 - b. Cost in moving and storing household equipment may be claimed.
 2. Losses during period of evacuation and exclusion.
 - a. Loss and damage to household and other personal property by theft, vandalism, fire, excessive wear or other causes attributable to the evacuation and lack of proper opportunity to care for property may be claimed.
 - b. Loss due to foreclosure of chattel mortgage on automobile and household appliances may be claimed.
 - c. Losses on personal insurance policies for non-payment of premiums where non-payment was due to evacuation or exclusion.
 - d. Legal, travel and other expenses which can be attributed to the evacuation or exclusion.

NOTE: It should be noted that Section 2 of the Evacuation Claims Act provides that the Attorney General shall not consider any Claim for damage or loss on account of death or personal injury, personal inconvenience, physical hardships or mental suffering or loss of anticipated profits or loss of anticipated earnings. In particular cases, as questions arise, determinations will be made by the Department of Justice as to whether certain losses may be allowed or must be excluded as anticipated profits or earnings.

It should be further noted that under the general language of the statute loss and damage to real and personal property of the types mentioned above, and other types which may be included in this list, may be claimed. There can, of course, be no assurance that every type of loss which is claimed will be determined by the Department of Justice to be allowable under the law. Even where the general type of loss claimed is allowable under the law, there can be no assurance that in a particular case the evidence available will be sufficient to obtain an award from the Attorney General. Moreover, even where some award is made in any particular case the amount of the award will be determined by the Justice Department, and such award may be equal to or less than the amount claimed.