

4.0 LANDLORD/TENANT ISSUES

4.1 Overview

This chapter focuses on Texas statutory and common law regarding the rights of landlords and tenants with respect to residential leases. Be wary of relying on resource materials that may include general statements of what the law usually is across the nation, as Texas law is quite different from the laws of other states, particularly regarding statutory landlord-tenant law.

4.2 Most Common Issues/Questions

- Is a tenant entitled to terminate a lease if the dwelling is completely or partially unusable?
- May a tenant withhold rent owing due to a landlord's failure to repair the dwelling after the disaster?
- What recourse does a tenant have if she cannot pay rent because of a lost job or wages?
- What should a tenant do if a landlord tries to evict the tenant following the disaster?
- Does a tenant have any right to recover against any party, including a landlord or neighbor, because of personal property loss or damage?

4.3 Summary of the Law

The landlord-tenant relationship in residential leases is governed almost exclusively by section 92 of the Texas Property Code. Issues not covered by the Property Code are covered by the common law. The Property Code thoroughly addresses most situations which can arise between a landlord and tenant, e.g., a landlord's duty to repair; when and under what circumstances a tenant may resort to self-help in getting repairs; when and under what circumstances a tenant or landlord may terminate the lease. Subchapter B of the Property Code, Repair or Closing of Leasehold, contains many of the provisions relevant to dealing with a disaster situation.

The Property Code is very lengthy and complex. Callers should be strongly discouraged from taking actions until they thoroughly understand their rights under the Property Code, especially as it relates to withholding rent (which they should never do) and/or terminating the lease. If the provisions of the Property Code, e.g., notice provisions, are not followed precisely, the party not following the provisions (either landlord or tenant) can be held liable for damages, attorney's fees, and civil penalties. See <https://texasattorneygeneral.gov/cpd/tenant-rights>. See, e.g., *Tex. Prop. Code § 92.005*.

It is also important to note that in their leases the parties may contract away certain rights or otherwise modify the landlord-tenant relationship. (However, the duty to repair under subchapter B can only be waived in very limited circumstances.) Therefore, a good starting point in answering a landlord-tenant question is the lease between the parties.

Commercial leases are governed primarily by the common law (although section 93 of the Property Code addresses some aspects of a commercial tenancy, e.g., interruption of utilities, removal of property, and exclusion of the tenant). Parties to commercial leases are given wide latitude in crafting their agreements in any way so long as the terms violate no law or important public policy. Therefore, the lease document will almost exclusively govern the relationship. If a particular situation is not expressly contemplated or addressed by the lease, then the relevant case law and rules of contract construction will apply.

Appeals from Eviction for Nonpayment of Rent

[Tex. Prop. Code §§ 24.0053, 24.0054](#); [Tex. R. Civ. Proc. 510.9](#). The justice court sets a bond for a tenant appealing a suit for eviction for nonpayment of rent, and the tenant must pay the bond within five days of the court's ruling if the tenant wants to appeal. If (and only if) it is a nonpayment of rent case, the tenant must pay one month's rent into the court registry within five days of the judgment to stay in possession of the unit during the appeal. If the tenant can't afford the bond, the tenant can file a Statement of Inability to Afford Payment of Court Costs or an Appeal Bond, but, if it is a nonpayment of rent case, he must still pay one month's rent into the court within five days of the appeal and must pay monthly rent thereafter to the county court registry within five days of the rent being due. ([Tex. R. Civ. Proc. 510.9](#).) If a tenant doesn't pay the rent into the justice court registry, the justice court may issue a writ of possession immediately without a hearing, allowing a constable to remove a tenant and his/her belongings from the leased premises.

Tenant's Remedies Regarding Revocation of Certificate of Occupancy

[Tex. Prop. Code § 92.023](#) states that a landlord who has the certificate of occupancy revoked for his leased premises is liable to a tenant not in default for (1) the full amount of tenant's security deposit; (2) a pro rata portion of any rental payment paid in advance; (3) tenant's actual damages; including any moving costs, utility connection fees, storage fees, and lost wages; and (4) court costs and attorney's fees from any related action against the landlord. This law only applies to leases entered into on or after September 1, 2011.

Repair Orders in Justice Courts

[Tex. Prop. Code § 92.0563](#) and [Tex. R. Civ. Proc. 510.1–9](#) set forth procedures for suits filed in justice court by tenants requesting relief regarding the repair of residential rental property. Justice courts are now allowed to order repairs to leased premises, order a reduction in the tenant's rent, award a civil penalty of one month's rent plus \$500, and assess damages of up to \$10,000, excluding interest and court costs, but inclusive of attorney's fees.

Tenant's Right of Restoration after Unlawful Utility Disconnection

The Texas Legislature has repealed provisions that permitted residential landlords to interrupt utility service for nonpayment of rent, and [Tex. Prop. Code § 92.0091](#) creates an expedited procedure for the justice court to issue an ex parte writ of restoration, ordering the utilities

immediately reconnected, pending a final hearing. A landlord's failure to comply is grounds for contempt ([Tex. Gov't Code § 21.002](#)), punishable by a fine and confinement in county jail.

However, under certain circumstances a landlord may interrupt service for certain allocated or prorated nonsubmetered electric bills for the non payment of the electric bill. This is under [Tex. Prop. Code § 92.008](#).

Landlord's Duty to Name all Occupants in an Eviction Suit

If an eviction is based on a written lease, then a landlord must sue, by name, all tenants who are obligated under the lease. If the landlord does not name each person who is obligated under the lease, those not named cannot be evicted and a writ of possession cannot be issued against that person. [Tex. R. Civ. Proc. 510.3\(c\)](#).

4.4 Assistance Numbers

American Red Cross Disaster Services Relief Hotline	1-800-RED-CROSS
Better Business Bureau	713-868-9500
FEMA	1-800-621-3362
State Bar of Texas Legal Disaster Hotline	1-800-504-7030
Texas Department of Insurance Consumer Helpline	1-800-252-3439
Texas Attorney General	1-800-252-8011

4.5 FAQs - General

Q. 4-1 What are my rights if I want to terminate my lease on my dwelling, following the disaster?

Section 92.054(b) of the Texas Property Code provides that if the rental premises are as a practical matter totally unusable for residential purposes and if the loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest or invitee of the tenant, either the landlord or the tenant may terminate the lease by giving written notice to the other at any time before repairs are completed. If the lease is terminated under this section of the Property Code, the tenant is entitled to a pro rata refund of rent from the date the tenant moves out and to a refund of any security deposit otherwise required by law.

Q. 4-2 If the premises are totally unusable because of the disaster, do I have to permanently move out even though I want to stay?

Most likely yes. If the premises are unfit for human habitation, there is a strong likelihood that a government agency, e.g., the local building department, will declare the premises off limits for residential use. Also, in addition to the landlord and tenant ability to terminate a lease if the rental premises are unusable as a result of a casualty loss (see [Q. 4-1](#) above), section 92.055 of the Property Code allows the landlord to “close the rental premises” by giving written notice by certified mail, return receipt requested, to the tenant, the local health officer, and the local building inspector stating that the landlord is terminating the tenancy as soon as legally possible. (This provision of the Property Code is less frequently used in natural disasters, because it is a more cumbersome process and the landlord cannot re-rent the unit within six months. Also, it requires that the lease contains a provision allowing the landlord to do this, thus making it “legally possible.”) On proper notice, the lease would be terminated. It is unclear exactly how much time a tenant has to move out once proper notice is given. However, it is most likely to be as soon as is reasonably practical. Of course, if it is only the landlord terminating the lease (and not a government official condemning the unit), and the tenant has not moved out, the landlord may not use self-help to remove the tenant. The landlord must still go through the judicial eviction process to remove the tenant from the unit. (See [Q. 4-13](#) below.)

The relief available to a tenant in these situations will depend on how the landlord has terminated the tenant’s lease and whether the tenant has given the landlord a written request for repairs. If the landlord uses section 92.054 (see [Q. 4-1](#) above) to terminate the tenant’s lease, then the tenant is entitled to pro rata refund of rent from date the tenant moves out and refund of security deposit. If the landlord closes the premises per Section 92.055, and the tenant has given a repair notice and moves out before the end of the lease term, the tenant is entitled to actual and reasonable moving expenses, a refund of the pro rata portion of rent, return of the security deposit, as well as a judgment of actual damages, civil penalties, court costs, and attorney’s fees. [Tex. Prop. Code § 92.055](#)(c), (d). If the landlord closes the premises per section 92.055, and the tenant has not given a repair notice, the tenant cannot get the remedies in section 92.0055 (c) or (d).

In short, if the tenant has not given a notice of termination pursuant to [Tex. Prop. Code § 92.054](#) ([Q. 4-1](#) above), has not received a termination notice from the landlord, and is not certain of the status of the unit, it is important to immediately send the landlord a proper notice of repair (as described in answer to [Q. 4-4](#) below). That will not only set up possible repair remedies pursuant section 92.0563 of the Property Code (described in answer to [Q. 4-4](#) below), but may also give the tenant additional remedies if the landlord chooses to close the premises under section 92.055 of the Property Code.

Q. 4-3 *If the dwelling is partially unusable because of the disaster and if I don’t want to permanently move out, can my rent be partially abated (temporarily reduced)?*

Yes. However, the tenant can only get the reduction by a judgment in a county or district court, or by agreement with the landlord. Section 92.054(c) of the Property Code provides if the rental premises are partially unusable for residential purposes and if the loss is not caused by the

negligence or fault of the tenant, a member of the tenant's family, or a guest or invitee of the tenant, the tenant is entitled to reduction in the rent in an amount proportionate to the extent the premises are unusable because of the casualty, *but only on judgment of a county or district court*. A landlord and tenant may agree otherwise in a written lease. Of course, since the tenant has the right to a rent reduction in these circumstances (assuming the lease has not waived that right), the tenant should attempt to negotiate a written agreement with the landlord, since section 92.005 of the Property Code allows the tenant to recover attorney's fees if the tenant prevails in a lawsuit for such a reduction.

Q. 4-4 May I withhold payment of rent because of the disaster or because the landlord has failed to timely repair the dwelling after the disaster?

NOTE: Because of the complexity of the provisions discussed below, callers should be strongly discouraged from repairing and deducting rent or otherwise effectuating the remedies without the advice of counsel and/or a very thorough understanding of sections 92.056, 92.0561, and 92.0563 of the Property Code. The discussion below only outlines some of the most prominent provisions. It is important to note that with respect to significant damage, (1) tenant is capped at the greater of monthly rent or \$500 for any repair and deduct remedies, which could be far below the amount of the repairs needed and (2) if the casualty loss is insured (which will depend on the coverages of the landlord, which may be unknown and/or in question), the period to make repairs does not begin until the landlord receives the insurance proceeds. So depending on the extent and nature of the damage, it might be advisable for the tenant to commence with a termination under section 92.054 instead of attempting to use the repair and deduct remedy.

No. A tenant should never withhold rent, and may only repair and deduct amounts from monthly rent, but only under certain, very specific and limited circumstances.

The Property Code requires landlords to make a diligent effort to repair or remedy certain conditions on the rental property. A landlord may be liable to a tenant for not making such repairs but only if the conditions set forth in section 92.056 of the Property Code are met. For the remedies in this section to be available: (1) the tenant must give the landlord notice of the specific condition that needs repair or remedy (the notice should be in writing and sent by certified mail, return receipt requested, by registered mail, or by a mail service that tracks delivery (such as offered by UPS or Fed Ex, otherwise a second notice is required); (2) the condition must materially affect the physical health or safety of an ordinary tenant; (3) if the first notice was not sent by certified or registered mail, the tenant must give the landlord a subsequent written notice to repair or remedy the condition after a reasonable time to repair or remedy the condition following the initial notice; (4) the landlord must have had a reasonable time to repair or remedy the condition after receiving the tenant's initial and/or subsequent notice (if required); (5) the landlord must not have made a diligent effort to repair or remedy the condition, e.g., if the landlord has diligently tried to fix a bad leak but has simply been unsuccessful, this requirement is not met; and (6) the tenant must not be delinquent in the payment of rent at the time the notice is given.

If all of these conditions are met a tenant may (1) terminate the lease; (2) repair the condition and deduct the cost (subject to the limitations discussed below) from subsequent rent payments; or

(3) obtain judicial remedies under the Property Code, e.g., an order directing the landlord to remedy the condition, an order reducing rent, judgment against the landlord for a civil penalty of one month's rent plus \$500, actual damages, costs and attorney's fees.

As for the repair and deduct remedy, there are some very strict limitations on the types of repairs that can be made, the circumstances under which they can be made, and the amounts the tenant may deduct from rent payments. For the tenant to be able to make repairs under this provision, the tenant must have given notice to the landlord of the need for remedy or repair, and one of the following must have occurred: (1) the landlord must have failed to remedy the backup or overflow of raw sewage inside the tenant's dwelling or the flooding from broken pipes or natural drainage inside the dwelling, (2) the landlord must have expressly or impliedly agreed in the lease to furnish potable water to the tenant's dwelling and the water service to the dwelling must have totally ceased, (3) the landlord must have expressly or impliedly agreed in the lease to furnish heating or cooling equipment; the equipment must be producing inadequate heat or cooled air; and the landlord must have been notified in writing by the appropriate local housing, building, or health official or other official having jurisdiction that the lack of heat or cooling materially affects the health or safety of an ordinary tenant, or (4) the landlord must have been notified in writing by the appropriate local housing, building, or health official or other official having jurisdiction that the condition materially affects the health or safety of an ordinary tenant. In addition, the notice to the landlord must state that tenant intends to repair or remedy the condition. Finally, the tenant must not have waived the landlord's duty to repair in a written lease (the duty can be waived only under very limited circumstance).

The tenant's deduction for the cost of the repair or remedy may not exceed the amount of one month's rent under the lease or \$500, whichever is greater. However, if the tenant's rent is subsidized in whole or in part by a governmental agency, the deduction limitation of one month's rent shall mean the fair market rent for the dwelling and not the portion of rent that the tenant pays. The fair market rent shall be determined by the governmental agency subsidizing the rent, or in the absence of such a determination, it shall be a reasonable amount of rent under the circumstances.

Repairs and deductions under this section may be made as often as necessary, as long as, the total repairs and deductions in any one month do not exceed one month's rent or \$500, whichever is greater. Again, because of the complicated nature of the repair and deduct remedy in the Property Code, a tenant should seldom be advised to use it.

As for all repair remedies, a complicating factor, as it relates to a natural disaster, is what constitutes a "reasonable time" for the landlord to make such repairs. Under the Property Code, there is a rebuttable presumption that seven days after receipt of notice is a reasonable time. However, section 92.054(a) of the Property Code states that for an insured casualty, the time for repair does not begin until the landlord receives the insurance proceeds.

Moreover, a landlord may sign an "Affidavit for Delay" and deliver it to the tenant, in which case the tenant must delay contracting for repairs. The affidavit must summarize the reasons for the delay and the diligent efforts made by the landlord up to the date of the affidavit to get the repairs done. The affidavit must state facts showing that the landlord has made and is making

diligent efforts to repair the condition, and it must contain dates, names, addresses, and telephone numbers of contractors, suppliers, and repairmen contacted by the owner. There are two lawful grounds for an “Affidavit for Delay.” An affidavit may delay repair by the tenant for: (1) fifteen days if the landlord's failure to repair is caused by a delay in obtaining necessary parts for which the landlord is not at fault; or (2) thirty days if the landlord's failure to repair is caused by a general shortage of labor or materials for repair following a natural disaster, such as a hurricane, tornado, flood, extended freeze, or widespread windstorm. Thus, a proper affidavit may delay repair by the tenant for up to thirty days. Also, the landlord may file subsequent affidavits, provided that the total delay of the repair or remedy extends no longer than six months from the date the landlord delivers the first affidavit to the tenant.

As stated previously, if the tenant has not terminated the lease and has not received a termination notice from the landlord, it is important for the tenant to immediately send the landlord a proper notice of repair as described here. That will not only set up possible repair remedies pursuant section 92.0563 of the Property Code described above, but may also give the tenant additional remedies if the landlord chooses to close the premises under section 92.055 of the Property Code.

Finally, if the tenant uses the repair and deduct remedy, causes repairs to be performed, or makes rent deductions for repairs in violation of the provisions or in bad faith, the landlord may recover actual damages and/or a civil penalty of one month's rent plus \$500.

Q. 4-5 My current unit is uninhabitable due to a disaster, but my landlord has another available. Is landlord required to make the other unit available? Can landlord make me sign another lease contract extending the length of my lease in order to move to the new unit?

No. Neither the landlord nor the tenant has any obligation with respect to other available housing unless expressly set forth in the lease. However, according to section 92.062 of the Texas Property Code, if—due to a disaster—you move to another unit owned by your landlord, your landlord cannot make you sign a new lease extending your lease term past the original end date.

Q. 4-6 Do I have to keep paying rent to my landlord while I am not living at my house/apartment?

Yes, unless and until the lease is terminated (by the tenant or landlord) or the tenant has an agreement with the landlord to do otherwise (in writing, to protect the parties). Unless the rental premises are as a practical matter totally unusable for residential purposes (see [Q. 4-1](#) above) a tenant will generally not be excused from paying rent while not occupying the premises. However, the tenant may be entitled to a rent reduction. (See [Q. 4-3](#) above.) This is true even in a case where authorities have “asked” residents not to return to an area because of the effects of a recent disaster. (This may change, however, in the event the authorities permanently forbid residents from returning to the area.)

Q. 4-7 What can happen and what should I do if I cannot pay the rent on my dwelling because of job or salary interruptions following the disaster?

Temporary government rent assistance may be available from the Federal Emergency Management Agency (FEMA) or other governmental agencies. Disaster Unemployment Assistance (DUA) may be available to you if you do not qualify for standard Unemployment Insurance (UI), are unemployed as a direct result of the disaster, are able and available to work, file an application for DUA within thirty days of the date of announcement of the availability of DUA, and have not refused in employment in a suitable position.

If your lease is terminated by your landlord because the premises are *totally* unusable, you must move out—regardless of whether you can or cannot pay the rent. Of course, if you do not leave, the landlord cannot use self-help to remove you—the landlord will have to file an eviction case against you in court and seek an order to remove you. If you live in public or federally subsidized housing or receive Section 8 assistance, you are entitled, in most circumstances, to have your rent reduced when you suffer a loss in income. You must notify your landlord or the housing authority. If the premises are only *partially* unusable and if you don't pay the abated (partially reduced) rent, you must move out if the landlord asks you to – unless you and your landlord agree otherwise. If the landlord is entitled to evict you and you do not move after the landlord has given you notice to vacate, you can be evicted only through a justice of the peace court eviction lawsuit.

Q. 4-8 How could I pay rent if I wanted to?

It is recommended that you contact your landlord to determine what methods of payment may be viable. Should you be unable to successfully contact your landlord, sending a personal check via certified mail to the address set forth in the lease agreement or the last provided address, if different, is advisable. Depending on the landlord, it may also have a website and have payment or other information related to the disaster on such site.

Q. 4-9 Can my landlord rent my home/apartment to someone else while I am gone?

No. The landlord must honor the lease unless the dwelling is *totally* unusable or the lease contains an express provision allowing the landlord to terminate in event of a fire, flood, or similar casualty. If the landlord wants you out in order to move someone else in, then the premises are obviously not “totally unusable” and the landlord cannot terminate the lease. If the landlord unlawfully locks you out, you should contact the justice of the peace about a writ of re-entry. This is an expedited process through which you can get back into your home the same day.

Q. 4-10 How do I contact my landlord?

It is advisable to try every means of communication available, including, but not limited to: telephone calls to every available phone number, e-mail correspondence, and letters sent via mail to the address set forth in the lease agreement or last provided address, if different. Depending on the landlord, it may also have a website and have contact or other information related to the disaster on such site. The tenant should document all efforts and attempts to contact her landlord.

Q. 4-11 My landlord told me to move out because the dwelling is totally unusable after the disaster. Do I have to move out?

If, following the storm, the dwelling is as a practical matter totally unusable for residential purposes, the landlord may terminate the lease by giving written notice to the tenant at any time before repairs to the dwelling are completed. If the lease is so terminated, the tenant must vacate the dwelling. (See also [Q. 4-1, 4-2](#) above.) The tenant is entitled to a pro rata refund of rent from the date the tenant moves out and to a refund of any security deposit otherwise required by law. [Tex. Prop. Code § 92.054\(b\)](#).

Q. 4-12 My landlord told me to move out the next day because he wants the dwelling for his daughter who lost her house in the flood. He told me if I didn't move out, he'd change the locks. Do I have to move out?

No. The landlord must continue to honor the terms of the lease. The landlord may not change the locks to prevent the tenant from entering the dwelling for such a reason. [Tex. Prop. Code § 92.0081](#).

Q. 4-13 What should I do if I am served with an eviction lawsuit?

A landlord cannot use self-help to remove a tenant from your apartment, and nor can the landlord use the police or law enforcement to assist in the tenant's removal without a final eviction order (writ of possession) issued by a judge. The landlord must file an eviction lawsuit in Justice Court in the precinct where the property is located to evict a tenant. Even if the landlord has properly terminated a lease because of a natural disaster, the landlord cannot remove a tenant without going to court. If the tenant is served with an eviction lawsuit, the tenant should carefully read the citation and look for deadlines, including the trial date in court. The tenant will have the opportunity to tell the judge her side of the story. The tenant can tell the judge about any defenses to eviction she might have, for example: the landlord did not properly terminate the lease; landlord did not give a notice to vacate after terminating the lease; or the landlord is retaliating against the tenant for asking for repairs. A judge can order the tenant's eviction for violating the terms of her lease, such as by not paying rent, or after the landlord properly terminated the lease and gave a subsequent notice to vacate. If the tenant lives in public housing, federally subsidized housing, or a tax credit property, the landlord must have good cause (like serious violations of your lease) to terminate or not renew the tenant's lease, and there may be other rights such tenants may have, such as access to a grievance procedure.

Q. 4-14 How can I recover my personal property from the leased premises?

FEMA and federal security officials are going to be in control of when and how evacuees are allowed to return to their homes.

Between evacuation and when the agencies permit a return, the best advice we can give an evacuee is to try to contact the landlord and determine whether the landlord (i) knows anything about the condition of the property, and (ii) has been able to do anything to secure the property.

4.6 FAQs – Can I Hold the Landlord or Previous Homeowner Responsible for Fraud or Negligence?

Q. 4-15 May I recover damages against my landlord for injuries or property damage I suffered as a result of the disaster?

When the injury or property damage results from a natural disaster and not from the landlord's negligence, the landlord is not liable for such injury or property damage. However, the Texas Property Code does not prevent claims made under existing common law and other statutory law, including against the landlord for injuries or property damage resulting from the landlord's negligence. *See* [Tex. Prop. Code § 92.061](#). The landlord can therefore be sued if the landlord's negligence caused or contributed to the tenant's injuries or damage from the disaster.

Q. 4-16 I have suffered personal injuries, or loss or damage to my personal belongings from the disaster. May I recover damages against my landlord or the previous homeowner if they knew about the possibility of flooding and failed to inform me?

If the landlord or seller made an affirmative misrepresentation concerning the possibility of flooding, the tenant or buyer may be able to sue the landlord or seller for fraud to recover for property damages or personal injuries. If you knew, however, that the property could flood or did not rely on the affirmative misrepresentation, then you will not be able to recover damages.

If the landlord or seller said nothing about the possibility of flooding, then you will probably not be able to recover any damages. Generally, the mere failure to disclose a fact known by the seller or landlord is not fraud. However, failure to disclose the possibility of flooding may, under certain circumstances, support a lawsuit against a landlord or seller who knew of past flooding or knew of the possibility of flooding. Active concealment of known past flooding (for example, painting over flood water marks on walls) may also be the basis for tenant recovery. *See* 37 Am. Jur. 2d, *Fraud and Deceit*, 144–146.

Q. 4-17 Can I recover damages against my landlord or the previous homeowner if they didn't know about the possibility of flooding?

No. As a general rule, the tenant or buyer cannot recover from the landlord or previous owner a loss or damage from flooding if the landlord or previous owner knew nothing about past flooding or the possibility of flooding, and did not tell the tenant or buyer that the property was not subject to flooding.

4.7 FAQs – Am I Covered by Insurance?

Q. 4-18 All of my personal belongings were destroyed at the place I rent. What help can I get from my insurance company?

If you had renter's insurance or homeowner's contents insurance at the time of the storm, contact your insurance company. If your situation is desperate, make sure you describe your situation to the insurance company. If the insurance company agrees that there is coverage, you can ask for advance payment to cover a part of your loss.

Emergency assistance may be available from local Volunteer Agencies (i.e., Red Cross, Salvation Army, United Way).

Q. 4-19 What should I do if I do not have insurance on my personal belongings?

If your losses are not covered by insurance, you may be able to receive money for "Other than Housing Needs" that are the result of a disaster from FEMA to replace necessary items of personal property. "Other than Housing Needs" assistance is available for necessary expenses and serious needs caused by the disaster. You may also wish to contact the Red Cross, which may be able to help you.

Q. 4-20 If my personal belongings are lost or damaged as a result of the hurricane, flood or other disaster, may I recover damages from my landlord under the landlord's hazard insurance policy?

No. The landlord has no "insurable interest" in the tenant's property, and therefore, the landlord's hazard insurance cannot (and does not) insure the tenant's personal property.

However, if the damage or loss of the tenant's property is due in whole or in part to the landlord's negligence, the tenant may be able to sue the landlord and the loss may be covered by the landlord's liability insurance carrier.

Q. 4-21 Is flood damage to my home covered under my insurance policy?

Your homeowner's insurance policy (sometimes called a "casualty insurance policy," "hazard insurance policy," or "fire and extended coverage policy") normally does not cover flood damage. The policy may cover water damage inside the home from direct or blowing rainfall, but it normally does not cover damage from surface water or rising water. Windstorm insurance normally will be limited to greater-than-normal wind conditions, such as from a disaster. You should carefully read your policy, talk to your insurance agent, and consult an attorney if you have questions.

Flood insurance may be purchased from the federal government under the National Flood Insurance Program (NFIP). You can buy policies from any state-licensed local agent if your community is participating in the NFIP. There is usually a thirty-day grace period after purchasing flood coverage until it goes into effect. Visit <http://www.fema.gov/media-library/assets/documents/272?id=1404> for information and Frequently Asked Questions.

Q. 4-22 Does my automobile insurance cover the damage to my car resulting from the disaster?

Normally, disaster damage to an owner's vehicle will be covered under the owner's comprehensive auto coverage, although specific language in the policy and any express policy exclusions will control.

Q. 4-23 May I recover damages against my neighbor whose property damaged my property during the disaster?

The general rule is that a person is not liable for injuries or damages caused by a natural disaster or "Act of God" where there is no fault of negligence on the part of the owner whose property caused damage to others during the disaster. Therefore, your neighbor is liable only when he or she was negligent and such negligence was a cause of the damage. *See* 1 Am. Jur. 2d, *Act of God*, 11, 15; 57 Am. Jur. 2d, *Negligence*, 669.

Q. 4-24 What can I do with someone else's property, which the disaster carried onto my land?

When personal property is carried away by flood, wind or explosion onto the land of another, such personal property still belongs to the original owner and the original owner may enter and retrieve it. If the landowner refuses to let the owner of the personal property enter, or if the landowner appropriates the property for the landowner's own use, the owner of the personal property can sue the landowner for the value of the property. The landowner is an "involuntary bailee" and has the right to possession of the property against all others, except the true owner. The landowner may, if necessary, move the property to use the land, provided it is done in a reasonable manner. The landowner may not damage the property either intentionally or through gross negligence. *See* 1 Am. Jur. 2d, *Abandoned, Lost, Etc., Property*, 24-27.

Q. 4-25 May I sue the local, state or federal government for damages caused by the disaster?

Under some circumstances, the government may have liability if its employees were negligent and caused the damages. However, under the doctrine of "sovereign immunity," governmental authorities are generally immune from liability for the negligent acts of their agents and employees. The doctrine of sovereign immunity normally applies to "governmental functions" such as crime prevention, flood control, firefighting, preservation of health, etc.

Q. 4-26 What about my commercial lease?

In commercial leases, the Texas common law has not been pre-empted by statute, but the answer to this question is commonly addressed by the terms of the lease. Therefore, you must review the provisions, preferably with an attorney if possible, to determine the scope of your rights and obligations.

Q. 4-27 Must I continue paying rent for my commercial lease space (office, retail, mini-storage, etc.) even though it has been rendered totally or partially unusable by the disaster?

The particular provisions of a commercial lease will control whether rent must be paid following a complete or partial destruction of the space. If the terms of the lease do not address casualty, then for a lease of space such as office space, retail space or ministorage space (but not for a lease of land), if the storm rendered the space unusable for its intended purpose, the lease is terminated and the tenant is relieved of its obligation to pay rent following the destruction. *Norman v. Stark Grain & Elevator Co.*, 237 S.W. 963 (Tex. Civ. App.—Dallas 1922, writ ref'd).