

5.0 REAL AND PERSONAL PROPERTY

5.1 Overview

In the summaries and Q&A discussion below, we have tried to anticipate some of the practical questions that homeowners, tenants, and business owners might ask concerning real and personal property issues.

Note, regarding the scope of this section: we do not address the mechanics of making insurance claims or the legal issues related to insurance claims.

Disaster Remediation Contracts

[Tex. Bus. & Com. Code §§ 58.002](#) and [58.003](#) regulate the actions of disaster remediation contractors who do not maintain offices within a county or adjacent county where a natural disaster occurred. Unless a disaster remediation contractor has an established office in the county or adjacent county where a property is located for at least one year prior to the contract, a disaster remediation contractor cannot require full or partial payment before beginning work and can only require partial payment reasonably proportionate to work performed.

Continuation of Homestead Exemption While Replacement Structure is Constructed

[Tex. Tax Code § 11.135](#) allows a homeowner to continue a homestead exemption for structures left uninhabitable or unusable by a casualty while the homeowner constructs a replacement if the homeowner does not establish a different principal residence for which the homeowner receives an exemption and intends to return and occupy the structure as the homeowner's principal residence. To continue the exemption, the homeowner must begin active construction of the replacement qualified residential structure or other physical preparation of the construction site, on or before the one year anniversary of the date the homeowner ceases to occupy the former qualified residential structure as its principal residence. The exemption, under these conditions, can be maintained for up to two years. It also preserves homestead protections for homeowners displaced by wind or water damage. If the homeowner sells the property prior to construction of the residential structure being completed, an additional tax is imposed on the property for the difference of the saved homestead exemption during the period of time the structure is uninhabitable. A tax lien attaches to the property on the date the sale is completed.

Increases in Tax Appraisal Value

[Tex. Tax Code § 23.01\(e\)](#) prohibits increases in the appraisal value of a property the year after the property's appraised value was lowered based on a protest or appeal, unless a chief appraiser can support an increase with substantial evidence.

Reappraisal of Property Damaged in Disaster Area

[Tex. Tax Code § 23.02](#). The governing body of a taxing unit that is located partly or entirely inside an area declared to be a disaster area by the governor may authorize reappraisal of all property damaged in the disaster at its market value immediately after the disaster. If reappraised, the governing body shall prorate the taxes for the year in which the disaster occurred.

Installment Payments of Taxes on Property in Disaster Area

[Tex. Tax Code § 31.032](#). If a residential homestead property, or other limited residential property, is damaged and is in a disaster area, the owner may pay the taxes in quarterly installments. This section also provides relief for small businesses with less than \$5 million (as adjusted annually for inflation) in gross receipts that have suffered similar damage by allowing payment of property taxes in installments as well.

Waiver of Certain Tax Penalties

[Tex. Tax Code § 23.129](#). The chief appraiser or collector may waive a late penalty for an otherwise compliant taxpayer if the late filing was the result of a disaster that made it effectively impossible for the taxpayer to comply with tax filing requirements or an event beyond the taxpayer's control that destroyed the taxpayer's property or records. The taxpayer must submit the waiver application within thirty days after the filing deadline.

5.2 Assistance Numbers and Helpful Regulatory Agency Information

HUD

1301 Fannin St., Suite 2200
Houston, TX 77002
(713) 718-3199 or 1-800-225-5342

OR

Single Family: (817) 978-5528
Public Housing: (713) 718-3214
Multifamily: (800) 685-8470

<http://www.hud.gov>

mail to: answers@hud.gov

Disaster Relief Options for FHA Homeowners

http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/nsc/qaho0121

FEMA

<http://www.fema.gov>

1-800-621-FEMA (3362)

Do I Qualify for "Housing Needs" Assistance?

<http://www.fema.gov/do-i-qualify-housing-assistance>

5.3 FAQs

Q. 5-1 My house was damaged and I can't live in it. Do I have to make my mortgage payments? What if I can't pay my mortgage because of job or salary interruptions following the disaster?

Most home loan documents require the homeowner to make mortgage payments after a disaster—even if the house is damaged and the owner can't live in it. However, many lenders will allow the owner to delay mortgage payments for several months after a disaster (although interest may continue to be added). Many lenders will make loan modifications to allow the missed payments to be added to the loan, thereby lengthening the term of the mortgage. The borrower needs to communicate with their lender and tell the lender about the specifics of his or her circumstances. The lenders will nearly always work with their customers. If the FHA guarantees the mortgage, there are special provisions after a disaster, such as those above. See the website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/nsc/qaho0121.

Q. 5-2 What if I can't make the payments? Can my lender foreclose on me?

The short answer is yes. The typical residential property mortgage in Texas doesn't include forbearance due to storm damage and allows the lender to foreclose following default. However, see the above discussion concerning forbearance and other payment options.

Note: Texas law allows for both judicial and nonjudicial foreclosures. See *Kyle v. Countrywide Home Loans, Inc.*, 232 S.W.3d 355, 362 (Tex. App.—Dallas 2007, pet. denied) (describing some steps of judicial foreclosure process); [Tex. Prop. Code Ann. § 51.002](#).

Q. 5-3 What should I do if I receive a notice that my lender is going to foreclose on my home for nonpayment of the mortgage?

If your mortgage is insured by the Federal Housing Administration (FHA) or financed by the Rural Development Agency of the U.S. Department of Agriculture, you may be entitled to reduced or suspended payments. See http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/nsc/qaho0121 and <http://www.rd.usda.gov/files/3550-1appendix16.pdf>.

Your lender must notify you and give you an opportunity to seek help before beginning foreclosure proceedings. However, you must meet the deadlines the lender will give you.

If you have income and you want to keep your house, you may be able to file a Chapter 13 bankruptcy. In this type of bankruptcy, the homeowner pays regular mortgage payments that accrue after the bankruptcy and all other living expenses and also pays an amount every month toward the mortgage installments that were delinquent prior to the bankruptcy. See [11 U.S.C. § 1322\(b\)\(5\)](#); *In re Adams*, 176 B.R. 9, 10 (Banker. E.D.N.C. 1994). If you think you may want to file a Chapter 13 bankruptcy, you should consult an attorney.

Q. 5-4 Who is responsible to replace my personal property that was located on someone else's property (on leased property, rented out to a customer, etc.)?

Absent a lease provision to the contrary, which would be unusual, the landlord would not be liable to the tenant (or the tenant's customers in a commercial context) for storm damage to the tenant's (or customers') personal property.

Put simply, this means the owner of the personal property bears the loss. Insurance contracts, however, will often produce a different result. For instance, the liability insurance carried by a car dealership might well cover storm damage to third party vehicles that were in the shop waiting for repair when the storm hit. In some situations, multiple insurance coverages might be available (in the example just given, the car dealership and the car owner may each have insurance that would apply). The resolution of the question of whose insurance would pay when neither party is at fault is beyond the scope of this outline.

Q. 5-5 Who is responsible for the value of my personal property that was stolen (looted)?

Generally, theft would be covered under most insurance policies. For homeowners, the specific property that might be covered, and the exclusions would all be set forth in the homeowner's policy. For tenants (for instance a tenant that operates a shop that was looted), the landlord's insurance is not likely to respond and, as noted above, the landlord is not going to be legally responsible absent either a lease provision or some widely recognized common law theory (landlord's failure to provide adequate security) that places the loss on the landlord. It seems highly unlikely that the common law theories would fit the circumstances of this disaster.

Q. 5-6 Is there any program available for me to recover the value of my lost personal property?

FEMA may cover some of the value of lost personal property. You may be able to receive money from FEMA for "Other than Housing Needs" that are the result of a disaster to replace necessary items of personal property, such as clothing, household items (room furnishings, appliances), tools (specialized or protective clothing and equipment) required for your job, and necessary educational materials (computers, school books, supplies). Applications for assistance can be made at either 1-800-621-FEMA or at www.fema.gov. Absent insurance, FEMA rules are going to apply, and are beyond the scope of this outline.

Q. 5-7 Can my property be condemned?

Short answer, yes. Agencies with appropriate jurisdiction (local, state, and federal) will make the decision whether a given structure is habitable.

Q. 5-8 If the property is condemned, will I be paid for it?

This form of condemnation (determining that a structure is no longer habitable) is not a "taking" for public use. The government would not be liable to the property owner for its value. *See, e.g., Fort Worth & D.C. Ry. Co. v. Ammons*, 215 S.W.2d 407, 410 (Tex. Civ. App.—Amarillo 1948, writ ref'd n.r.e.). Insurance, FEMA disaster assistance, or similar relief will generally be the only sources of recovery.

Q. 5-9 How will I know if my property is safe to move back to?

Government agencies and FEMA will make this decision. How they will make it and when are issues beyond the scope of this outline.

Q. 5-10 My property has been damaged in a disaster (flood, tornado, explosion, hurricane). Do I still have to pay the same amount in taxes that I paid last year?

Maybe not. According to [Tex. Tax Code § 23.02](#), if your property is in an appraisal district located “partly or entirely inside an area declared to be a disaster area by the governor,” the taxing authority may have your property value reappraised immediately following the disaster. Taxes on the property will be prorated for the year in which the disaster occurred based on the date of the disaster and the value of the property both before and after it.

Q. 5-11 What if my property was affected by a nonnatural disaster (i.e., an explosion)?

[Tex. Tax Code § 23.02](#)(a) and (d) allow people who have suffered property damage from *any* disaster, including nonnatural ones, to have their property reappraised immediately following the disaster.

Q. 5-12 How are property taxes calculated on the property following the disaster?

Taxes on the property will be prorated for the year in which the disaster occurred based on the date of the disaster and the value of the property both before and after it.

For example, a property that would normally pay \$10,000 in taxes is damaged by an explosion on March 7th and is then reappraised at a value that would only owe \$5,000 in taxes for the year. The taxes on the property would be calculated in two steps. In the first step, the appraisal district would divide the number of days the property would have owed the full \$10,000 by the number of days in the year. It would then multiply this number by \$10,000 (the full tax amount). The taxes owed on the property for January 1st through March 6th of the year would be $(65/365)*10000=\$1780.82$. To find the rest of the amount due, the appraisal district would divide the number of days the property would have owed the reduced \$5,000 amount (the day of the disaster plus the number of days remaining in the year) by the number of days in the year. It would then multiply this number by \$5,000. The taxes due for March 7th through December 31st would be $(300/365)*5000=\$4108.59$. In this example, the total taxes owed would be \$5890.41, the total of \$1780.82 and \$4108.59.

Q. 5-13 What is a “disaster recovery program?”

It is a program “administered by the General Land Office that is funded with Community Development Block Grant Disaster Recovery Program money authorized by the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009...and the Consolidated and Further Continuing Appropriations Act, 2012 . . .” [Tex. Tax Code § 23.23](#)(g).

Q. 5-14 A building(s) on my property was repaired by a disaster recovery program after the disaster. The building is different from the original that was replaced. Will this affect my taxes?

Under [Tex. Tax Code § 23.23\(g\)](#), replacement structures that differ from the originals may not necessarily be considered “new improvements” if an increase in the square footage or the quality of construction and composition were necessary to satisfy the requirements of the disaster recovery program.