

## 3.0 FALLING TREES, FLYING LIMBS, & RELATED NOISES

### 3.1 Overview

This chapter addresses natural disasters—heavy rains, high winds, flooding, etc.—causing uprooted trees, broken tree limbs, and other like objects to damage persons or property. This chapter also addresses noise during cleanup.

### 3.2 Most Common Issues/Questions

- My neighbor's tree fell into my yard during the disaster. It smashed my fence and took out my landscaping. Can I make my neighbor pay for the fence repairs and landscaping?
- What if my neighbor's tree hits my house?
- No trees came down during the disaster, but I'm sick of picking up limbs out of my yard from my neighbor's tree. I'm worried about the next storm; that tree looks awful. What can I do?
- Can I make my neighbor trim the tree branches that hang onto my property?
- My neighbors are freaking out after the disaster and want to cut down all their trees. These trees provide the only shade in my yard. Can I stop my neighbors?
- My neighbors had a lot of trees fall on their property. They keep running a chainsaw long after I've put my kids to bed. Can I stop them?
- The fence between my property and my neighbor's property is down. Who has to pay to replace it?

### 3.3 Summary of the Law

The answers to many of the above questions depend on whether the property owners have homeowner's insurance. Further, the answers might vary due to city or county ordinance. It is possible local ordinances and regulations dictate that local municipal departments are, at times, responsible for cleaning up neighborhoods.

Generally, a court may not award damages for losses, damage, or harm suffered resulting from an "act of God." An act of God means an occurrence due directly and exclusively to natural causes without human intervention and for which no amount of foresight or care, reasonably exercised, could have prevented (including natural disasters). "[D]amages resulting from an act of God are not ordinarily chargeable to anyone." *Hutchings v. Anderson*, [452 S.W.2d 10](#), 15 (Tex. App.—Dallas 1970, no writ). There are, however, at least two exceptions to this general rule.

The act of God doctrine exempts high wind and rain damage covered by the homeowner or tenant's insurance policy. Additionally, the doctrine also exempts flood damage covered by a separate flood insurance policy. While insurance agents sell flood insurance, the Federal Emergency Management Agency oversees flood insurance policies as part of the National Flood Insurance Program. Thus, the first question is whether the homeowner or tenant has an insurance policy. The second question is whether the policy covers losses due to the specific kind of damage that occurred (e.g. high winds and rain damage). A policy may entirely exclude coverage for losses from disasters or only cover certain types of losses. In one case, a policy did not mention disasters specifically, but excluded from coverage any losses caused by floods and high water "whether driven by wind or not." That policy language prompted a fact-

intensive inquiry into whether rising waters or wind-driven rain caused the damages. *National Union Fire Insurance Co. v. Cox*, [393 S.W.2d 939](#) (Tex. App.—Houston 1965, no writ).

Regardless of whether the negligent person reasonably foresaw the disaster or its force, the act of God doctrine is inapplicable to situations in which negligence was the substantial contributing cause of the damages. Instead, the doctrine only applies when a natural disaster or similar act of God is the sole or exclusive cause of the damages. *Macedonia Baptist Church v. Gibson*, [833 S.W.2d 557](#), 560 (Tex. App.—Texarkana 1992, writ denied) (“An accident is the result of an act of God when it is due directly and exclusively to natural causes without human intervention.”). For example, after a homeowner successfully recovered damages caused by a billboard sign that collapsed on her house in 1983’s Hurricane Alicia, one Texas court stated:

[C]onditions created by the defendant’s initial negligence must not have run their course and must have actively contributed to the injuries . . . If an actor’s conduct is a “substantial factor” in causing harm to another, the fact that he did not foresee nor should have foreseen the extent of the harm or the manner in which it occurred does not preclude liability.

*Gannett Outdoor Co. of Texas v. Kubeczka*, [710 S.W.2d 79](#), 85 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1986, no writ) (internal citations omitted). That court found that the billboard company’s failure to take “adequate precautionary measures” to secure the sign “actively contributed” to the sign’s falling on the house—regardless of whether the force of Hurricane Alicia was foreseeable. *Id.* In that regard, a failure to secure objects reasonably expected to be swept up in a disaster could also create liability. Similarly, if a disaster uproots a tree and damages neighboring property or persons, the failure to take steps to remove, or at least secure, a diseased or dead tree may make the homeowner liable for damages to the neighbor.

### **3.4 Assistance Numbers**

#### **A. Federal**

**Federal Emergency Management Agency (“FEMA”); 1-800-621-FEMA (3362); FEMA App.** If your home was damaged during a disaster and repairs are not covered by insurance, you may qualify for a FEMA grant to make your home safe and livable. Structural repairs (roof, foundation, etc.) may be covered. However, the FEMA grant will not cover cosmetic repairs (shutters, carpet, etc.). FEMA encourages homeowners with damage to register so that an agent can be sent to assess the damage and determine what repairs can be covered. Register online at [DisasterAssistance.gov](#), by calling 1-800-621-FEMA (3362), or on the FEMA App.

Generally, FEMA requires private property owners to use their own resources to clean up debris from their property. However, local government officials may set up various options to assist residents in collecting and disposing of debris after a disaster. These could include provision of drop-off sites or a curbside collection program, among others. A public entity’s removal of debris generally requires an immediate threat to life, public health, or safety. Further, state or local authorities must expressly authorize the emergency debris removal. Private landowners should call 3-1-1 or contact local government if they believe the city should authorize debris removal as part of the public interest. Further information is located on [FEMA’s public assistance fact sheet concerning the removal of debris from private property](#).

## B. *State of Texas*

[Texas Department of Insurance \(“TDI”\)](#); 1-800-578-4677. TDI offers services to consumers and insurers, including help locating insurance carriers, monitoring insurance fraud, and answering Frequently Asked Questions. In addition, TDI issues important bulletins relating to disasters and handling post-disaster claims. TDI considers insurance-related complaints via its [website](#). For questions or assistance, contact TDI’s consumer helpline at 1-800-252-3439. See TDI’s website for other disaster resources.

### ***County, City, and Debris Removal Websites:***

#### Bexar County

- [City of San Antonio](#)
  - [Debris Removal](#)

#### Dallas County

- [City of Dallas](#)
  - [Debris Removal](#)

#### El Paso County

- [City of El Paso](#)
  - [Debris Removal](#)

#### Harris County

- [City of Houston](#)
  - [Debris Removal](#)

#### Potter County

- [City of Amarillo](#)
  - [Debris Removal](#)

#### Travis County

- [City of Austin](#)
  - [Debris Removal](#)

## 3.5 **FAQs**

***Q. 3-1 My neighbor’s tree fell into my yard during the disaster. It smashed my fence and took out my landscaping. Can I make my neighbor pay for the fence repairs and landscaping?***

You likely cannot hold your neighbor liable if your neighbor’s tree was healthy before the disaster and the storm’s high winds caused fall damage to your property. This sort of damage qualifies as an “act of God.” However, if the tree was decayed, diseased, dead, or in an otherwise dangerous condition before the disaster, you may be able to hold your neighbor liable for damages caused by the tree’s fall. This is because your neighbor was likely negligent in maintaining the tree. If the tree posed an unreasonable risk of harm, your neighbor had a duty to trim the branches or remove the tree before the storm to prevent it from falling over. See *Luther Transfer & Storage, Inc. v. Walton*, [296 S.W.2d 750](#), 753–754 (Tex. 1957) (“It is

established in our law that damages resulting from an act of God are not ordinarily chargeable to anyone. However, for a defendant to be relieved of liability for an unprecedented flood there must be no negligence on his part concurring with the acts of God to cause the damage.”). *Hutchings v. Anderson*, [452 S.W.2d 10](#), 15 (Tex. App.—Dallas 1970, no writ).

Note that homeowners’ insurance, whether the homeowner or neighbor’s policy, typically covers damage caused by fallen trees. As a practical matter, it may be easier to claim on your insurance and let your insurance company pursue any subrogation claim that may exist against your neighbor.

**Q. 3-2      *What if my neighbor’s tree hits my house?***

Same as above. If the tree was healthy and it fell due to high winds during the disaster, your neighbor is likely not responsible. If the tree was in poor condition prior to the disaster, your neighbor probably should have removed the tree or taken other reasonable measures prior to the storm. The dispute over who should cover this damage boils down to which homeowner’s insurance policy provides coverage. If your neighbor is not responsible for the tree damage, your insurance should cover you. If your neighbor is responsible by their failure to remedy the tree’s poor condition, your neighbor’s insurance should cover you. Again, as a practical matter, it may be easier to make the claim on your own policy. This will allow your insurer pursue its potential subrogation claim against your neighbor.

**Q. 3-3      *No trees came down during the disaster, but I’m sick of picking up limbs out of my yard from my neighbor’s tree. I’m worried about the next storm. That tree looks awful. What can I do?***

You can cut limbs that grow onto your property, but you cannot kill the tree. The tree owner may be responsible for removing a dead or diseased tree prior to a storm, but you cannot take on that responsibility yourself. Rather, you should inform your neighbor, in writing, of the dangerous condition of the tree. You should request your neighbor address the problem. Keep a copy of your request for your records. If your neighbor fails to remedy the tree’s condition and your property is consequently damaged (as in the examples above), you will likely be able to recover damages from the tree owner.

Contact your city or local government. Certain city departments may be responsible for cleaning up neighborhoods per building codes, sign codes, nuisance violations, and beautification projects. If the city or local government determines that the tree is dangerous, it may issue a notice requiring removal.

**Q. 3-4      *Can I make my neighbor trim the tree branches that hang on to my property?***

No. If the tree is healthy, you can trim branches that hang over your property line. Your trimming is limited to only the parts of the tree on your property. However, you cannot make your neighbor trim the tree branches on your property. In addition, if you trim branches on your property, you cannot kill your neighbor’s tree. If your neighbor’s tree dies after your trim, your neighbor can attempt to recover for their damages. If your neighbor’s tree is dead, diseased, or dangerous, contact your local government. If the local government determines that the tree is dangerous, it may issue a notice to the tree owner requiring removal.

**Q. 3-5      *My neighbors are freaking out after the disaster and want to cut down all their trees. They provide the only shade in my yard. Can I stop my neighbors?***

No. The trees belong to your neighbors, and, thus, they may cut down the trees. Even if the trees provide shade to your yard or if the tree's branches hang into your yard, you still cannot stop your neighbors from removing their trees. However, if a tree is located on the property line, you may have an ownership interest in the tree. Your ownership interest will likely require your approval before removal of the shared tree occurs. If the tree meets the requisite size, restrictive covenants or protective tree ordinances concerning your subdivision may apply. Check with your homeowner's association for any applicable restrictive covenants and with your local government for any applicable ordinances.

**Q. 3-6      *My neighbors had a lot of trees fall on their property. They keep running a chainsaw long after I've put my kids to bed. Can I stop them?***

Some cities have noise ordinances banning loud sounds at certain times. Check with your local government for noise requirements and time restrictions.

For example, Houston Noise Ordinance Section 30-5 limits noise to 65 dB(A) during daytime hours and 58 dB(A) at night (e.g. a typical chainsaw has a volume of around 100 adjusted decibels dB(A)). The ordinance defines daytime hours as those between 8 A.M. and 10 P.M. Conversely, the ordinance defines nighttime hours as those between 10:01 P.M. to 7:59 A.M. the following day. Houston, Tex., Code of Ordinances, Ch. 30, §§ 30.1, 30.5(a)(1)(2017). However, Houston's ordinance has two exceptions. One is for "emergency work," which the ordinance defines as, "any work performed for the purpose of: (i) preventing or alleviating the physical trauma or property damage threatened or caused by an emergency, (ii) restoring property to a safe condition following a fire, accident, or natural disaster, (iii) protecting persons or property from exposure to danger, or (iv) restoring public utilities." Houston, Tex., Code of Ordinances, Ch. 30, §§ 30-1, 30-16(3)(2017). While this exception is probably intended for the city and its contractors, the intent is not clear. Your neighbor could potentially argue that said work (e.g. tree cutting) qualifies as "emergency work."

Another exception to the Houston ordinance exists for, "the operation of any mechanically powered saw, drill, sander, router, grinder, lawn or garden tool, lawnmower, or any other similar device used between the hours of 7:00 A.M. and 8:00 P.M., provided the device does not produce a sound exceeding 85 dB(A) when measured from the property line." See Houston, Tex., Code of Ordinances, Ch. 30, § 30-16(7). This ordinance also requires the homeowner use the equipment solely for maintenance or upkeep of the subject property.

**Q. 3-7      *The fence between my property and my neighbor's property is down. Who has to pay to replace it?***

If a fence is located entirely on your neighbor's property, the law considers the fence the exclusive property of your neighbor.

Unless you have entered into an enforceable agreement with your neighbor, you are not obligated to fix a fence on your neighbor's property, nor can you compel your neighbor to fix their fence. You are also not obligated to fix the fence if applicable deed restrictions mandate that fences be erected and divide responsibilities among neighbors. Conversely, if the fence is on your property, it is your sole responsibility to repair it. However, your neighbor cannot compel you to replace your fence. Additionally, if the fence was originally installed on your neighbor's property but fell on to your property because of the storm, you can remove the fence from your property (in the same way you can move trees and limbs from your property).

Unless an agreement otherwise indicates and both neighbors “use” it, both neighbors own a fence straddling the boundary line between their properties. In that situation, you and your neighbor would share the cost of repairing and replacing the fence. Check local ordinances for the applicable definition of “use.”