

3.0 FALLING TREES, FLYING LIMBS & RELATED NOISES

3.1 Overview

This chapter addresses situations in which natural disasters—heavy rains, high winds, flooding, etc.—cause uprooted trees, broken tree limbs, and other like objects to damage persons or property, including 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. They 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

As a general rule, compensation may not be obtained for losses, damage, or harm suffered as a result of an act of God, which means an occurrence due directly and exclusively to natural causes without human intervention and 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.

First, damage suffered by a homeowner or tenant due to high winds or rain may be covered by an insurance policy, and damage caused by flooding may be covered by a separate flood insurance policy (sold by an insurance agent and overseen by the Federal Emergency Management Agency as part of the National Flood Insurance Program.). The first question, then, is whether the homeowner or tenant has an insurance policy, and the second is, if so, whether the policy covers losses due to the specific kind of damage that has occurred (for example, damage from high winds and rain). A policy may exclude coverage for any losses from disasters altogether or may cover only some types of losses, but not others. 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 which damages were caused by rising waters and which were caused by wind-driven rain. *National Union Fire Insurance Co. v. Cox*, [393 S.W.2d 939](#) (Tex. App.—Houston 1965, no writ).

Second, the “act of God” doctrine applies only where 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.”). It does not apply to situations in which negligence has been a substantial contributing cause of the damages, regardless of whether or not the person who is negligent could have reasonably foreseen the disaster or its force. After a homeowner successfully sued to recover for damages caused by a billboard sign that collapsed on her house during Hurricane Alicia in 1983, 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 [14th Dist.] 1986, no writ) (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 had been foreseeable. *Id.* In that regard, a failure to secure objects that can reasonably be expected to be swept up in a disaster likely gives rise to liability. Similarly, the failure to take steps to remove, or at least secure, a diseased or dead tree may well make a homeowner liable for damages if the tree is uprooted by a disaster and damages neighboring property or persons.

3.4 Assistance Numbers

Federal:

Federal Emergency Management Agency (FEMA) [fema.gov](#); 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 it safe and livable. Structural repairs (roof, foundation, etc.) may be covered, but cosmetic repairs (shutters, carpet, etc.) will not be covered. 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. Local government officials may set up various options to assist residents in collecting and disposing of debris after a disaster, including providing drop-off sites or a curbside collection program. Removal of debris by a public entity generally requires an immediate threat to life, public health, or safety and must be expressly authorized by state or local authorities. Private land owners should call 3-1-1 if they believe the city should authorize debris removal as part of the public interest, or contact local government. FEMA’s fact sheet on removal of debris from private property is available online [here](#).

State of Texas:

Texas Department of Insurance (TDI) tdi.texas.gov; 1-800-578-4677. TDI offers services to consumers and insurers, including help locating insurance carriers, monitoring insurance fraud, and offering answers to Frequently Asked Questions. In addition, TDI issues important bulletins relating to disasters and post-disaster claims handling. Insurance-related complaints can be made to TDI via their website [here](#). For questions or assistance, contact the consumer helpline at 1-800-252-3439. See TDI's website for other disaster resources.

County, City, and Debris Removal:

Bexar County bexar.org

- **City of San Antonio** sanantonio.gov
 - **Debris Removal** sanantonio.gov/swmd

Dallas County dallascounty.org

- **City of San Antonio** dallascityhall.com
 - **Debris Removal**
dallascityhall.com/departments/sanitation/pages/brush_and_bulky.aspx

El Paso County epcounty.com

- **City of El Paso** elpasotexas.gov
 - **Debris Removal** elpasotexas.gov/environmental-services/collections

Harris County harriscountytexas.gov

- **City of Houston** houstontx.gov
 - **Debris Removal** houstontx.gov/solidwaste/debris_08302017.html

Potter County co.potter.tx.us

- **City of Amarillo** amarillo.gov
 - **Debris Removal** <https://www.amarillo.gov/departments/planning-and-development-services/public-works/solid-waste-collection-disposal/bulky-item-pick-up>

Travis County traviscountytexas.gov

- **City of Austin** austintexas.gov
 - **Debris Removal** <https://austintexas.gov/department/residential-brush-collection>

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?*

If the tree was healthy before the disaster and the storm's high winds caused the tree to fall over and damage your property, you likely cannot hold your neighbor liable, as this 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, because your neighbor was 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 generally covers this type of damage.

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 had the tree removed or taken other reasonable measures prior to the storm. The dispute over who should cover this damage is likely one about home insurance—if your neighbor is not responsible, your insurance should cover you; if your neighbor is responsible, your neighbor’s insurance should cover you. As a practical matter, it may be easier to claim on your insurance and let your insurance company pursue any claim that may exist 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. And 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 of the dangerous condition of the tree and request that your neighbor address the problem. If your neighbor fails to do so and you end up with damage (as in the examples above), you will likely be able to recover damages from the tree owner.

Contact your local government. Certain city departments are responsible for cleaning up neighborhoods using building codes, sign codes, nuisance violations, and beautification projects. If the city 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 onto my property?*

No. If the tree is healthy, you can trim branches that hang onto your property up to the boundary of your property line, but you cannot make your neighbor trim them. If you trim branches, you cannot kill the tree, and if the tree dies, your neighbor can attempt to recover damages from you for trespass. If the tree is dead, diseased, or dangerous, contact local government—if the city determines that the tree is dangerous, it may issue a notice requiring removal.

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

No. The trees belong to your neighbors, and thus are their property to do with as they wish, even if the trees provide shade to your yard or if the trees' branches hang into your yard. However, if the tree is located right on the property line itself, you may have an ownership interest that would require your approval to remove the trees. Additionally, restrictive covenants or a tree ordinance pertaining to your subdivision that protects the trees if they are a certain size 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 that may prevent sounds above a certain decibel level at different times. A typical chainsaw has a volume of around 100 adjusted decibels (dB(A)). Check with local government for noise requirements and time restrictions.

For example, the Houston Noise Ordinance (Section 30-5) limits noise to 65 dB(A) during daytime hours and 58 dB(A) at night. Daytime hours are defined as between the hours of 8 a.m. and 10 p.m. Nighttime hours are defined as 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). But even that Ordinance has two exceptions. One exception is for "emergency work," which is defined 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, it is not clear and your neighbor may successfully argue that emergency work is being performed in cutting the trees.

Another exception in that 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). The equipment must be used for the maintenance or upkeep of the property on which the equipment is being operated.

The analysis is likely the same if your neighbor is starting a new business selling firewood from all the downed trees brought to the 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 fence is considered to be the exclusive property of your neighbor. Consequently, unless you have entered into an enforceable agreement with your neighbor or certain deed restrictions mandate that fences be erected and divide responsibilities among neighbors, you are not obligated to fix the fence on your neighbor's property, nor can you compel your neighbors to fix their fence. On the other hand, if the fence is on your property, it is your responsibility to fix it, though your neighbor cannot compel you to replace the fence. If the fence was originally installed on your neighbor's property but fell on to your property as a result of the storm, you can remove the fence from your property in the same way you can move trees and limbs from your property.

If the fence is on the boundary line between both properties, both property owners own the fence as long as both “use” it, unless an agreement indicates otherwise. Thus, you and your neighbor would share the cost of repairing and replacing the fence. Check local ordinances for the applicable definition of “use.”