

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

[Sections 58.002](#) and [58.003](#) of the Texas Business and Commerce Code 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 may not require a partial payment in an amount that exceeds an amount reasonably proportionate to the work performed, including any materials delivered. A contract subject to this chapter must be in writing.

Continuation of Homestead Exemption While Replacement Structure Is Constructed

[Tex. Tax Code § 11.135](#) allows a homeowner to continue to receive a homestead exemption for the structure and the land and improvements used in the residential occupancy of the structure rendered uninhabitable or unusable by a casualty while the homeowner constructs a replacement if: (1) the homeowner does not establish a different principal residence for which the homeowner receives an exemption and, (2) the homeowner 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 first anniversary of the date the homeowner ceases to occupy the former qualified residential structure as its principal residence. The site of a replacement qualified residential structure is under physical preparation if the owner has engaged in architectural or engineering work, soil testing, land clearing activities, or site improvement work necessary for the construction of the structure or has conducted an environmental or land use study relating to the construction of the structure. 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 before construction of the residential structure is completed, an additional tax is imposed on the property equal to the difference between the taxes imposed on the property for each of the years in which the owner received the exemption and the tax that would have been imposed had the owner not received the exemption in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due. A tax lien attaches to the property on the date the sale is completed. The lien exists in favor of all taxing units for which the additional tax is imposed.

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 reasonably support an increase with substantial evidence from the record. The chief appraiser may satisfy

this requirement by presenting evidence showing that the inequality in the appraisal of property has been corrected with regard to the properties that were considered in determining the value of the subject property. The burden of proof is on the chief appraiser to support an increase in the appraised value of property under the circumstances described by this subsection.

Installment Payments of Taxes on Property in Disaster Area

If a residential homestead property, or a residential property that has less than five living units, or property owned or leased by a business entity with less than \$5 million in gross receipts in the entity's most recent federal tax year or state franchise tax annual period (in 2009 dollars—adjust annually for inflation by using the index that the comptroller considers to most accurately report changes in the purchasing power of the dollar for consumers in Texas) is in a disaster area and has been damaged by or as a direct result of the disaster, the owner may elect to pay the taxes in four equal installments, each of which are to be due two months apart from one another. In order to take advantage of this provision, the first installment must be paid before the first day of the month following the date the taxes are delinquent, and such payment must be accompanied by a notice to the taxing unit that the person will pay the remaining taxes in three equal installments. The three subsequent installments must be made by the first day of the second, fourth and sixth months after the delinquency date, respectively. For example, if the delinquency date is February 1, the second installment must be paid before April 1, the third installment must be paid before June 1, and the fourth installment must be paid before August 1. A person or business entity may pay more than the amount due for each installment, and the amount in excess of the amount due shall be credited to the next installment. If the person or business entity fails to make a payment before the installment payment deadline, the unpaid installment is delinquent and incurs a penalty of six percent. See [Tex. Tax Code § 31.032](#).

Waiver of Certain Tax Penalties

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 if an event beyond the taxpayer's control destroyed the taxpayer's property or records. The taxpayer must submit the waiver application within thirty days of the filing deadline. See [Tex. Tax Code § 23.129](#).

Manufactured Homes - Regulation

The Texas Department of Housing and Community Affairs, through its Manufactured Housing Division (the "Division") regulates the manufactured housing industry in Texas. In addition to other duties, the Division is responsible for maintaining records of ownership of manufactured homes and records determining whether the manufactured home is considered real property or personal property under Texas law. The Division is also responsible for issuing and monitoring licenses to persons in the manufactured housing industry, as well as investigating and resolving consumer complaints. [Click here](#) to contact the Division.

Manufactured Homes – Statement of Ownership

Title to a manufactured home is evidenced by a "Statement of Ownership". Statements of Ownership are issued by the Division headquarters in Austin. You must apply to the Division for your Statement of Ownership within 60 days after you buy or relocate your home. This is very important because ownership of a manufactured home does not pass or vest at a sale or transfer of the home until a completed

Application for Statement of Ownership is filed with the Division. If you purchase your home from a licensed retailer, they may assist you in completing the necessary forms, and they must provide all necessary information, supporting documents, and fees and documents to the Division. If you acquire a home from someone other than a retailer, you may obtain the necessary forms from the Division's website or by calling 1-800-500-7074. To determine what you will need to submit with your Statement of Ownership application, please read [Applying for a Statement of Ownership \(PDF\)](#).

Buying Flood Damaged Manufactured Homes

Manufactured homes which have sustained flood or wind damage must be properly repaired and inspected before they can be sold or conveyed. A salvaged manufactured home cannot be sold or conveyed to anyone except a licensed Retailer and only a licensed retailer is authorized to rebuild a salvaged manufactured home. In addition, federal law requires that new homes sustaining damage must be rebuilt in accordance with the manufacturer's specifications and must pass inspection by the Manufacturer's Design Approval Primary Inspection Agency. These restored homes are sold as new homes and come with a one-year manufacturer's warranty. If the manufacturer will not honor the one-year warranty due to the extent of damage, then the restored home must be sold as a used home, at a reduced cost. Such homes will be sold with only a 60-day warranty of habitability.

5.2 Assistance Numbers and Helpful Regulatory Agency Information

U.S. Department of Housing and Urban Development (HUD)

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

OR

TTY: (800) 877-8339
Single Family: (877) 622-8525
Public Housing: (713) 718-3214
Multifamily: (800) 685-8470

<http://www.hud.gov>

Email to: answers@hud.gov

Federal Emergency Management Agency (FEMA)

<http://www.fema.gov>

1-800-621- 3362

Email to: FEMA-New-Media@dhs.gov

Do I Qualify for Housing Assistance?

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

Disaster Relief Options for FHA Homeowners

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

Property Taxes in Disaster Areas and During Droughts

<https://comptroller.texas.gov/taxes/property-tax/disasters/index.php>

Texas Department of Housing and Community Affairs – Manufactured Housing Division

<https://www.tdhca.state.tx.us/mh/index.htm>

[Click here for contact information](#)

5.3 Frequently Asked Questions

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 agreements 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). A loan deferral is commonly referred to as a forbearance. Many lenders will make loan modifications to allow the missed payments to be added to the loan, thereby lengthening the term of the mortgage. A loan modification can also lower the interest or the payment amount depending on the borrower's situation. The borrower needs to communicate the specifics of his or her circumstances with the lender as early as possible because lenders will often work with their customers when the circumstances permit. If the Federal Housing Administration (FHA) guarantees the mortgage, there are special provisions after a disaster, such as those above. In the wake of a disaster, some of the federal home loan guarantee programs often have moratoriums for a period of time. For more information on those provisions, see the section titled *How Can This FHA Disaster Relief Help Me?* 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?*

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 non-judicial foreclosures. See *Kyle v. Countrywide Home Loans, Inc.*, 232 S.W.3d 355, 361–62 (Tex. App.—Dallas 2007, pet. denied) (describing some steps of the judicial foreclosure process); [Tex. Prop. Code § 51.002](#) (describing the steps of the non-judicial foreclosure process). Typically, most purchase money loans can foreclose via a non-judicial method. A non-judicial foreclosure only requires certain notices to be issued prior to selling at a foreclosure auction. Foreclosure auctions in Texas occur on the first Tuesday of each month except a few specific statutory holidays. No court is involved in the non-judicial foreclosure, as the name suggests. Home equity loans and tax foreclosures, among other types of loans, require a judicial foreclosure process. It is important to look at the type of loan and review the loan documents and deed of trust to determine which process is required and if it is being followed properly.

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 FHA or is 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 the foreclosure proceedings. However, you must meet the deadlines the lender gives 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, all other living expenses, and an amount every month toward the mortgage installments that were delinquent prior to the bankruptcy. See [11 U.S.C. § 1322](#); *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 *In the event of a disaster, who is responsible for replacing my personal property that was located on someone else's property (on leased property, rented out to a customer, etc.)?*

Absent an unusual lease provision to the contrary, the landlord will not be liable to the tenant (or the tenant's customers, in a commercial context) for storm damage to the tenant's (or its customers') personal property. Some landlords require tenants to have renter's insurance. A tenant who has renter's insurance might be able to file a claim for damage to personal items through the tenant's insurance company.

Put simply, the owner of the personal property bears the loss. Insurance contracts, however, will often produce different results. For instance, the liability insurance carried by a car dealership might 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), but 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 *In the event of a disaster, who is responsible for reimbursing me for the value of my stolen (looted) personal property?*

Generally, theft is covered under most insurance policies. Furthermore, a homeowner's policy usually sets forth what specific property is included and excluded for homeowners. A landlord's insurance is not likely to cover a tenant's looted property, and, as noted above, the landlord will probably not be legally responsible absent either a lease provision or a widely recognized common law theory (e.g., a landlord's failure to provide adequate security) that places the loss on the landlord. It is highly unlikely that a common law theory would fit the circumstances of the disasters within the scope of this outline.

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

FEMA may cover some of the value of your 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 required for your job (specialized or protective clothing and equipment), and necessary educational materials

(computers, school books, supplies). Applications for assistance can be sent by either calling 1-800-621-3362 (hearing/speech impaired ONLY—call 1-800-462-7585) or by visiting <https://www.fema.gov/individual-disaster-assistance>. Absent insurance, FEMA rules apply and are beyond the scope of this outline.

Q. 5-7 Can my property be condemned?

Yes. Agencies with appropriate jurisdiction (local, state, and federal) can decide to condemn a property.

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

Determining that a structure is no longer habitable (condemnation) is not a “taking” for public use. Thus, the government would not be liable to the property owner for the value of the condemned property. See, e.g., *Fort Worth & D.C. Ry. Co. v. Ammons*, [215 S.W.2d 407](#), 410 (Tex. 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 it is safe to move back into my property?

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

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

Maybe not. Under state law, if your property is damaged due to a disaster your property may qualify for a temporary exemption from property taxes of between 15% to 100% of the appraised value of the property. In order to qualify for a temporary exemption, (1) the damage must have occurred to “qualified” property (see discussion below), (2) the property must have been damaged by a disaster in a governor-declared disaster area, (3) the property must be at least 15% damaged. See [Tex. Tax Code §11.35](#). The following types of property are considered “qualified” property: (a) tangible personal property used for income production, (b) improvements (e.g. buildings) on your land and (c) certain manufactured homes.

In addition, your local county or city may offer exemptions under certain circumstances. We recommend that you check with the tax controller in your county.

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

If your property is damaged by a non-natural disaster, you will not qualify for the property tax exemption described in Q. 5-10 above. You should check with your local tax authority to see if you might be eligible for some other type of exemption.

Q.5-14 – How much of an exemption am I entitled to?

If you qualify for an exemption, the percentage of the exemption will depend on the amount of damage to the property. The degree of damage is determined by the chief appraiser of the county appraisal district appraisal office. In determining the level of damage, the chief appraiser may rely on information from a

county emergency management authority, the Federal Emergency Management Agency (FEM A) or other appropriate source. The exemption percentage starts at 15% and can go up to 100% if the property is totally destroyed.

Q. 5-14 – What is the process to request an exemption from paying my property taxes?

In order to be eligible for a temporary exemption from property tax due to a disaster, you must submit your request to the appraisal district office in the county where the property is located. [Click here](#) for the application form (Form 50-312: Temporary Exemption Property Damaged by Disaster). **You must apply for the temporary exemption no later than 105 days after the governor declares a disaster area.** Following your application, the chief appraiser will assess the degree of damage to the property (see Q.5-14 above) and will determine whether to approve, modify or deny your application or whether more information is necessary in order to make a determination. The chief appraiser must notify you of its decision no later than five (5) days after making a determination.

Q. 5-15 – I qualified for a tax exemption. How long will it last?

The exemption lasts until January 1 of the first tax year in which the property is reappraised

Q. 5-14 What is a “disaster recovery program”?

A “disaster recovery program” is a program “administered by the General Land Office or by a political subdivision of this state that is funded with community development block grant disaster recovery money authorized by federal law.” [Tex. Tax Code § 23.23\(g\)](#).

Q. 5-15 A disaster recovery program repaired a building on my property after a disaster. The building is different from the original that was replaced. Will this affect my taxes?

It depends. 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.