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 if 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.

Reappraisal of Property Damaged in Disaster Area

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. A taxing unit that authorizes a reappraisal under this section must pay the appraisal district all the costs of making the reappraisal. If two or more taxing units provide for the reappraisal in the same territory, each shall share the costs of the reappraisal in that territory in the proportion the total dollar amount of taxes imposed in that territory in the preceding year bears to the total dollar amount of taxes all units providing for reappraisal of that territory imposed in the preceding year. If reappraised, the governing body shall prorate the taxes for the year in which the disaster occurred. See *Tex. Tax Code § 23.02*.

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 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 pay the taxes in four equal installments, each of which are to be due two months apart from one another, beginning with the first installment on the delinquency date and the proceeding payments on the first day of the second month after the preceding payment. 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.
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

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). 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 the specifics of his or her circumstances with the lender because lenders will nearly always 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. 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 close 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?**


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.

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 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), 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. 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 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. 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 non-natural disaster (i.e., an explosion)?

Tex. Tax Code § 23.02(a) and (d) allow people who have suffered property damage from any disaster, including non-natural disasters, 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, suppose that a property that would normally pay $10,000 in taxes becomes damaged by an explosion on the 65th day of the year (March 7th) and is then reappraised at a value that would only owe $5,000 in taxes for the rest of the year. The taxes on the property are calculated in two steps. In the first step, the appraisal district divides the number of days the property owed the full $10,000 by the number of days in the year. It then multiplies this number by $10,000 (the full tax amount). Thus, in this example, the taxes owed on the property for January 1st through March 6th of the year are $1780.82 ((65/365)*$10,000). To find the rest of the amount due, the appraisal district then divides the number of days the property owes 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 then multiplies this number by $5,000. Thus, in this example, the taxes due for March 7th through December 31st are $4108.59 ((300/365)*$5,000). Therefore, in this example, the total taxes owed are $5890.41, the total of $1780.82 and $4108.59.

Q. 5-13  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. 5-14  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.