

3.0 FALLING TREES, FLYING LIMBS & LOUD NEIGHBORS

3.1 Overview

Disaster damage from the heavy rains, ferociously high winds, and flooding manifests in a number of ways. Not uncommonly, objects such as furniture or heavy tree limbs go flying, or trees are uprooted by the storm. This chapter addresses questions regarding those situations in which high winds, heavy rains, or flooding cause uprooted trees, tree limbs, and other like objects to damage persons or property.

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, pain, or care, reasonably exercised, could have prevented. This definition includes natural disasters. As one court put it, "The law imposes no liability for injuries or damages sustained as the result of an act of God. Nor is one liable for damages caused by the act of God, if such act be the direct or proximate cause of the injury." *Correll v. City of Spartanburg*, 169 S.C. 403, 169 S.E. 84. (SC 1933). There are however, at least two situations in which that general rule may not come into play.

First, damages suffered by a homeowner or tenant due to high winds or rain may be covered by an insurance policy. (Damage caused by flooding is covered by a separate flood insurance policy

sold by your insurance agent and overseen by FEMA as part of the National Flood Insurance Program.) The first question, then, is whether the homeowner or tenant has an insurance policy. If so, the critical inquiry is whether the policy covers losses due to high winds and rain. A policy may exclude coverage for any losses from disasters all together or may cover only some types of losses and not others. Insurance policies are subject to the general rules of contract construction and policies are construed in favor of coverage, and exclusions in an insurance policy are construed against the insurer. *Buddin v. Nationwide Mutual Ins. Co.*, 250 S.C. 332, 337, 157 S.E.2d 633, 635 (SC 1967).

Second, the “act of God” doctrine applies only where the natural disaster or similar act of God is the sole or exclusive cause of the damages. *See Montgomery v. National Convoy & Trucking Co.*, 186 S.C. 167, 195 S.E. 247 (1938) (act of God is a valid defense only when it is the sole cause of plaintiff’s injury). “Where the result of “act of God” is, in part, ascribable to participation of man, either through active intervention or neglect or failure to act, whose occurrence is thereby humanized, and is generally removed from operation of rules applicable to “acts of God,” although there is an exception in some jurisdictions where “act of God” was of overwhelming nature.” 57A Am. Jur. 2d *Negligence* § 535 (2004).

Courts have found that the failure to take “adequate precautionary measures” to secure property “actively contributed” to the property falling on the house, regardless of whether the force of a hurricane, tornado, or other natural disaster had been foreseeable. In that regard, a failure to secure objects that can reasonably be expected to be swept up in a disaster is likely to give 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 thereby damages neighboring property or persons.

3.4 Assistance Numbers

Federal:

Federal Emergency Management Agency (FEMA) www.fema.gov; 1-800-621-FEMA (3362). 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 not 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 will be covered. You can register online at www.DisasterAssistance.gov or by calling the FEMA number above.

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. There must be an immediate threat to life, public health, and safety to justify the removal of debris by a public entity, and this must be expressly authorized by state or local authorities. FEMA’s policy on removal of debris from private property is available online at: <https://www.fema.gov/media-library-data/1505410429104-0f5a4bb391550eb55a4176233050e411/PublicAssistancePPDRFFaceSheet.pdf>.

State of South Carolina:

South Carolina Department of Insurance (“SCDOI”). Offers numerous services for consumers and insurers. SCDOI helps with locating insurance carriers, monitoring insurance fraud, and offering answers to Frequently Asked Questions. In addition, the Department of Insurance will issue important bulletins relating to preparing for disasters and post disaster claims handling. Insurance-related complaints can be made to SCDOI via their website at <https://www.doi.sc.gov> or by filling out the PDF form provided at their website. For questions or assistance, contact the consumer helpline: 803-737-6180. See SCDOI’s website for various disaster resources: <https://doi.sc.gov/847/Hurricane-Preparedness> .

South Carolina Emergency Management Division:

Prior to the start of the 2019 Hurricane Season, the South Carolina Emergency Management Division “SCEMD”, in coordination with county emergency management officials, is updating the state’s emergency operational condition levels, or OPCONs. Now, agencies will coordinate, prepare and respond to major emergencies based on three levels of readiness instead of five. All State Emergency Response Team agencies and county emergency managers in all 46 counties have instituted the new OPCON levels.

The new levels are designed to simplify the steps agencies take in order to fully activate emergency resources. The three OPCONs and their definitions are more compatible with the majority of state and federal emergency management organizations nationwide, making the state’s processes and procedures easier to understand for teams deploying into South Carolina during a disaster.

OPCON THREE: Normal Daily Operations

Agencies coordinate, plan, train and exercise as warranted. Incidents are monitored by the State Warning Point and local emergency managers.

OPCON TWO: Enhanced Awareness

A disaster or emergency is likely to affect the state. Emergency Operations Plans are implemented. The State Emergency Operations Center is partially activated if necessary.

OPCON ONE: Full Alert

A disaster or emergency is imminent or occurring. The State Emergency Operations Center is fully activated. All agency personnel are activated or available for activation.

Know Your Zone. SCEMD wants South Carolina residents and visitors to learn about hurricane evacuation zones and their vulnerability to storm surge on South Carolina’s coast with the interactive Know Your Zone interactive map through the official app of SCEMD or at <https://www.scmd.org/prepare/know-your-zone/> .

Emergency Planning for Your Family. SCEMD provides the tools to prepare for emergencies, including: Family Disaster Planning, Family Emergency Kit, Preparing Your Pets for Emergencies, Citizens with Functional Needs, Emergency Preparedness for Kids, and Reporting a Power Outage. <https://www.scmd.org/prepare/your-emergency-plan/>

Emergency Shelters. Open Shelters can be located at <https://www.scemd.org/stay-informed/emergency-shelters/> .

City of Columbia. It is suggested that all citizens clean up their own yards and help their neighbors. *Dial 2-1-1* with questions and updated information on storm clean up.

Garbage Collection in South Carolina. The Solid Waste Division has restrictions which are based on local Collections Ordinances requirements and restrictions. An example of the City of Columbia’s Collections Ordinance can be found at: https://library.municode.com/sc/columbia/codes/code_of_ordinances?nodeId=COOR_CH19SO_WAMA_ARTIICODI .

Make sure to check for local garbage collection ordinances.

3.5 **FAQs**

Q. 52 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 cannot hold your neighbor liable. This was an “Act of God.”

However, if the tree was decayed, diseased, dead, or in an otherwise dangerous condition before the disaster, you can hold him liable for damages. In this case, your neighbor was negligent in maintaining the tree. The tree posed an unreasonable risk of harm and your neighbor had a duty to trim the branches or remove the tree before the storm to prevent it from falling over. “It is established in our law that damages resulting from an act of God are not ordinarily chargeable to anyone. Withstanding negligence on the part of the defendant in maintaining the health of the tree (preventing a potentially dangerous condition before the disaster, etc.), the defendant may be relieved of such liability for an unprecedented flood or other act of God. Home insurance may cover this type of damage, unless an exemption is clearly stated in the policy.

Q. 53 What if my neighbor’s tree hit my house?

Same as above. If the tree was healthy and it fell due to high winds during the disaster, your neighbor is not responsible. If the tree was in poor condition prior to the disaster, your neighbor should have had the tree removed or taken other reasonable measures prior to the storm. The dispute is likely one over home insurance—if your neighbor is not responsible, your insurance should cover; if it was your neighbor’s responsibility, 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. 54 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 the limbs that grow onto your property, but you cannot kill the tree. The tree owner may have the responsibility for removing a dead or diseased tree prior to a storm, but you cannot take on that job yourself. Rather, you should inform your neighbor of the dangerous condition of the tree and request that they address the problem. If they fail to do so and you end up with damage (like the examples above), you will be able to recover damages from the tree owner.

If you live in the city of Columbia, call 803-545-3430 if your neighbor refuses to remove a dead or damaged tree. The Code Enforcement Division enforces a variety of local ordinances related to the property maintenance and nuisances on all properties in the city of Columbia. This is done to ensure a healthy and safe environment in order to provide a high quality of life for residents, businesses and visitors. In addition, the city has adopted the International Property Maintenance Code (IPMC). The IPMC was designed to help code officials recognize the need for modern, up-to-date property maintenance code governing the maintenance of existing buildings through model code regulations that are clear and specific. The IMPC2015 can be found at <https://columbiapd.net/code-enforcement/> .

The City of Columbia's Forestry and Beautification Department (803-545-3860) maintains City trees, gateways and landscaped medians to ensure safety and to increase the quality of life for residents and visitors. The City of Columbia Code of Ordinances Article IV. – SUBDIVISIONS – Division 13. LANDSCAPING REQUIREMENTS – states that after the notification of violation of the provisions of the division the owner will be subject to the notice will be fined up to \$500.00 per day per violation as long as the violation exists. https://library.municode.com/sc/columbia/codes/code_of_ordinances?nodeId=COOR_CH17PL_LADEZO_ARTIIIIZO_DIV13LARE

If you live outside of Columbia, you should check with your local city government to determine if there is a property or a tree ordinance that applies to your situation.

Q. 55 Can I make my neighbor trim the tree branches that hang onto my property?

No. You can trim them, but you cannot make your neighbor trim them. And if you trim them, it needs to be in such a way that it won't kill the tree. Otherwise, if the tree dies, your neighbor could attempt to recover damages from you for trespass. This presumes the tree is healthy. Also, you can only trim the branches up to the boundary line. If the tree is dangerous, then you can call to see if the Code Enforcement Division for the city or county agrees. The Code Enforcement Division is responsible enforces a variety of local ordinances related to the property maintenance and nuisances on all properties in the location. Check with your local city government to determine if there is a property or a tree ordinance that applies to your situation.

Q. 56 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?

Not under common law. The trees belong to your neighbors and thus are their property to do with as they wish. It does not matter if the trees are your shade or if the trees' branches go over into your yard. Although, if the tree is on the property line, you may have an ownership interest. Additionally, there may be restrictive covenants or a tree ordinance pertaining to your subdivision that protects the trees if they are a certain size. Check with your homeowner's association for any applicable restrictive covenants. If you live in the city of Columbia, check and see if your neighborhood has an applicable ordinance. If you are outside the city of Columbia, check with your local city government.

Q. 57 My neighbors had a lot of trees fall on their property. They keep running a chain saw long after I've put my kids to bed. Can I stop them?

It depends. For example the city of Columbia does have a noise ordinance. The City of Columbia Code of Ordinances (Section 8-67(c)) makes it unlawful for any person to operate, or cause or permit to be operated, any instrument or sound-producing or sound-amplifying device so loudly as to unreasonably disturb persons in the vicinity thereof or in such a manner as renders the instrument or device a public nuisance. Although, there are permits for special occasions that may be granted by the city council (Section 8-67(d)).

As for the question related to a reasonable time to operate instruments of sound-producing or sound-amplifying devices, there is no specific time set out in Section 8-67(c), but there is a restriction for playing any radio, phonograph or musical instrument between the hours of **10:00p.m. and 7:00a.m.** (Section 8-67(b)). Loud and unusual noise as the result of building operations (commercial), which includes the use of any pile drivers, steam shovels, pneumatic hammers, derricks, steam or electric hoists or other apparatuses (prohibited between **11:00p.m. and 6:00a.m.**) does not apply for residential areas (Section 8-69).

Section 8-93 has a table for the Maximum Permitted Sound Pressure Level (In Decibels) for both Residential and Commercial areas. This table can be found at https://library.municode.com/sc/columbia/codes/code_of_ordinances?nodeId=COOR_CH8EN_HESA_ARTIINO_DIV1GE_S8-61UNLODIUNNO.

So if you live in Columbia and your neighbor is using the chain saw after 10:00 p.m., your neighbor may be violating the noise ordinance. The analysis is the same if your neighbor is starting a new business selling firewood from all the downed trees brought to the property. That said, you are probably best served by talking to your neighbors and asking them to limit the hours they are cutting rather than trying to take them to court for the noise. If you live in the city of Columbia, call 803-545-3430 to see if the Code Enforcement Division can provide you assistance.

If you live outside of Columbia, you can check to see if your local government has a similar noise ordinance.

Q. 58 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 there are certain deed restrictions mandating fences to be erected and which spell out responsibilities among neighbors, you are not obligated to fix the fence if it is on your neighbor's property. Nor can you compel your neighbors to fix the fence if it is on their property. On the other hand, if the fence is on your property, it is your responsibility, 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 if they both use it and thus would share the cost of repairing and replacing the fence. Every state interprets "use" differently, but there are three main definitions:

- Occupancy – use of the land up to the fence.
- "Join" for use – the attachment of another fence to the boundary fence.
- Entire enclosure – the property owner's entire property is enclosed by the attachment of other fencing to the boundary fence.

Most state laws or local ordinances place responsibility for the maintenance of the boundary fences on the owners that use the fence unless an agreement indicates otherwise.