



Acts of God: Who's Liable?

by Lee Kanon Alpert, Attorney

Webster's dictionary defines "Act of God" as, "an extraordinary interruption by a natural cause (as a flood or earthquake) of the usual course of events that experience, prescience, or care cannot reasonably foresee or prevent." If a property owner is fully compliant with current building and safety codes and an act of God occurs, what liability do the property owners hold for any damage, injury or death that results? What if an owner has acted in good faith and made reasonable efforts in getting up to code, but a natural disaster hits prior to completion, what liability do they

carry then?

In recent years, even with

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differing laws across states, legal decisions have steadily re-

moved the shields of the 'Act of God' clause and defense. The argument that a property owner was compliant with the current law, and/or had more time to become compliant with the new law as a defense from liability are being struck down much to the surprise of property owners acting in California, it is clear from several cases that have been decided and confirmed by higher California Courts, that should a structure be deficient of the necessary protection it need afford its occupants, or if the owner knew or should have known of the deficiency and a tragedy occurs, notwithstanding if the tragedy is caused by

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a natural disaster (Act of God) or the fact that the law did not require protective compliance until a date later than the disaster, it will not protect the owner from liability.

The Courts have opined that the idea behind the dates of the retrofit laws "...is not the promotion of the interests of the building owner. Instead, the overriding policy is public safety..." as stated by the 2nd District Court of Appeal in California in *Myrick v. Mastagni* (185 Cal.App.4th 1082 (2010)). So what does this mean for property owners in Los Angeles where the government is now in the process of identifying potentially unsafe buildings that need retrofitting? Although the City recognizes the practicality of the cost of retrofitting and has made allowances as to timing of compliance, the grace period the City provides does not change the owners' risk of liability should an act of God occur based on the *Myrick v. Mastagni* ruling. Simply put, if a real property owner knows or should have known that their property is at risk and an earthquake strikes, then the owners are still exposed to significant liability until the necessary repairs and retrofitting are completed to correct the problem. Now that the City has begun identifying high-risk buildings for collapse and damage, prop-

erty owners are given even greater notice as to the dangers their properties may pose, and the substantial liability they face should they fail to address the defects expeditiously. From a legal standpoint, if a property owner should have known their real property could be unsafe in the event of an Act of God, and even more so if it has been identified as a potentially unsafe property by the municipality, then there is only one option to minimize the owner's risk and liability. The property must be vacated immediately, or if that is not practicable then retrofitting work must begin immediately to reasonably mitigate the potential

cause of damage or liability. Although the advice is undoubtedly severe and undeniably presents substantial financial strain for many property owners, this is what is necessary to protect you, your business and your financial future. The monetary hit may seem significant now, but just imagine the catastrophic loss you are avoiding in the future by preparing now. 

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