

Information and Advice for Landslide Victims:
Prepared for Pittsburgh Geological Society by Cynthia Lum,
a landslide victim expressing her personal views.

Western Pennsylvania is a region that is prone to landsliding. Landslides occur for an assortment of reasons - improper drainage, improper land development, improper engineering and construction practices, mining practices, reactivation of ancient landslides, and natural weaknesses in underlying rocks.

Although landsliding also affects roads, the most devastating landslides are those that happen to homeowners. As the need for new land causes expansion into areas previously judged to be unstable and unsuitable for development, landslides are becoming increasingly common. Improper development of the land, such as improper fills, filling in natural drainageways, building in unstable soils, and building on steep slopes, often results in future failures.

When a landslide happens, it can prove devastating and costly, and remediation is difficult and often impossible. The following narrative gives victims some guidance in understanding the ramifications of a landslide.

Local, state and federal contacts:

Landslides generally only slowly affect a small number of properties at a time. For this reason, neither FEMA nor PEMA can directly help you. This also applies to The Army Corps of Engineers and any state or federal disaster programs. These agencies, as well as the Disaster Mitigation Program, are worth contacting, however, as they are very knowledgeable and can give you information. Your local county office can give you contact addresses for these.

Your local municipality should be contacted immediately. Insist that they come to look at your slide and arrange a meeting with the entire municipal council. They should have their engineers do a study and provide you with a report. You also want to try to get copies of any documents and maps relating to the development of your property such as municipal meeting minutes, code and development regulation adherence approvals, and sewer and storm sewer system maps. Do not be surprised if these are not available or have disappeared. Although your local government is protected from joint responsibility for any negligence by Sovereign Immunity, they will not want you looking too closely into the details of their deliberations and approvals for developers' work that was done at your site. Do not be naïve; all those involved with the development and construction of your property will be working to seek legal protection from responsibility, and will not be working in your best interest.

Your municipality will not directly help you if your slide is entirely on private property. They will claim that there is nothing they can do as the slide is now your legal responsibility. The reasons will vary from their inability to use taxpayers' money to "improve" private property, their assistance generating an unwarranted flood of others in your community wanting equal treatment for their own problems, to political reasons. There will also be a reluctance to address your problem openly as dissemination of the possibility that properties in your community are unstable is not advantageous in attracting new home buyers to your area. They can, however,

apply for assistance from state or federal officials if shared community water systems are damaged and must be reinstated. You must be aware, however, that any government assistance can come at a high price to you. Any repairs you undertake yourself, or with government monies, will be your legal responsibility. Landslide prone areas with concrete retaining walls and steel pins have been known to fail repeatedly bringing steel and concrete blocks down on neighbors or roads below.

Under current laws, municipalities have several options if you insist on their help. If they can find a means to partially fund costly repairs through government grants, before they can use tax payers' money for the remainder, they can, and must, charge you, personally, whatever they can, and then place a lien against your home, if they can secure a legal judgment that your slide is a hazard to the community. This will certainly be the result if you are tempted not to pay your property taxes in protest. Bankruptcy for you may follow and condemnation of your home is possible if the risk of habitation of your home is thought to be too high. The property can then be acquired by your municipality by eminent domain and the "private property" issue for repairs, circumvented. Compensation will be at their discretion and based on the arguable value of the property and any liens placed on it. Under current laws, this will place you in a "Catch 22," and will unfortunately ensure that your property is valueless to you even if the slide is repaired.

Victims must contact their county, state, and federal elected officials. Although they will inform you that there is nothing they can do for the same "private property" reasons, the more attention your plight receives, the better. Protection for homeowners in legislation will only come if sufficient pressure is put on governments to address this growing problem. As government officials will be reluctant to help you, contact as many fellow victims as possible and inform the media. You are not alone and the scale of this problem must be highlighted. State and federal assistance may happen if elected officials receive attention for their aid, particularly in an election year. The PA General Assembly has debated bills and resolutions, such as HB 768 (1985) and HR 433 (1996), to protect landslide victims and initiate government funded landslide insurance program. As of yet, these have not been passed. Only pressure from victims will force legislative change.

Your elected officials may contact other agencies such as the Department of Environmental Protection (DEP), but you should make these contacts yourself. Whether or not you have Mine Subsidence Insurance, you should contact the PA Dept. of Mining for information regarding mines below your property. The Pittsburgh Geological Society and the PA Bureau of Topographic and Geologic Survey (DCNR) are well informed regarding landslides and can provide you with information, support and topographical maps. University and college geology departments might provide information and a geologist's assessment of your slide, free of charge, as numerous studies have been made of landslides over the years. This is not just a Pennsylvania environmental problem, so look for information in other states. Such groups as the Natural Resources Conservation Service in eastern Kentucky have produced a brochure concerning landslides and the need for insurance coverage such as is available in California and Washington State. A Grand Forks, Minnesota, newspaper in Sept. of 2003, produced an editorial entitled, *A call for landslide insurance*. Knowledge is essential and they will welcome your story. Environmental groups can help to encourage legislators to address this problem.

Legal pursuits for remediation:

Legal pursuits to remediate a landslide can be costly and difficult. The current statute of limitations on the remediation of building problems is 12 years. Outside of this (landslides generally occur beyond this time frame), the burden of proof in holding someone legally responsible is yours. You have to prove negligence in order to receive compensation from the party you are suing. Because “pain and suffering” cannot be included in such cases, a lawyer working on a contingency fee will be hard to find as awards can only include your actual personal property loss. The value of several square feet of “sliding” dirt is minimal. Inclusion of the “loss of the value” to you of your home at its pre-landslide market price is only admissible if this has been proven either by its having been offered for sale or having been condemned due to damage. Either way, it is without its previous value and you will be removed from the property. Again, this is a “Catch 22.” Without a repair of the slide, it will remain valueless and compensation awards to you can only be assessed on the likelihood of a repair. This can be as high as a million dollars. Your base award will not be sufficient to fund repairs and a successful outcome for you will only be possible if you can prove negligence on the part of an entity capable of funding repairs.

Suing neighbors and their insurance companies, whom you feel may have contributed to the slide is a costly exercise. You may be no better off after legal expenses and will certainly generate ill feeling among your neighbors with whom you should, instead, be working to gain governmental assistance. You will have to be confident in overcoming the exclusion clause in insurance coverage for landslides. In the 1992 Supreme Court case of *Steele vs. Statesman Insurance Co.*, the wording of the insurance coverage regarding landslides was found to only exclude those from *Force Majeure* (Act of God). Manmade landslides were found to be included. However, this was particular to this case and the wording of most insurance coverage is more specific, particularly after this judgment was upheld. You should also be aware that the cost of taking a case to this level in the court system in time and money can be extremely high and appeals are always likely.

In all court cases, the collection of evidence is time-consuming and difficult. You should not expect any help from your municipality for the reasons stated above. Collection of documents from your municipality, your property’s development and home building companies, and sewer and water providers will not be secured without costly legal means. Although you may find data on the susceptibility of your area to landslides, in order to prove negligence in the poor engineering of landfill, you will need geologic data, such as compaction tests on soil, and watershed conditions before the slide. If these are available, then the likelihood is that problems were anticipated and “reasonable” steps were taken to ensure a slide did not happen. For the most part, risks are taken by municipalities in building in unstable areas to increase the tax base and you will only have geo-technical professional opinions of your property’s instability. Negligence in the poor engineering of landfill has to be proven based on the likelihood of future problems.

In assessing post-slide conditions, you will have to hire a geo-technical firm to collect data. Although they might give you an inexpensive surface assessment of your slide, their professional opinion in a court of law, due to their reputations, will require a contract and costly

investigations. You should realize, however, that homeowners in your area will be very reluctant to agree to have bore holes drilled on their properties for this purpose. Your slide has already made them fearful that their own property values have been affected. They will not want to risk further perceived problems in any sale of their properties or damage from your collection of evidence. They will not want to know that their properties' might be at similar risk, thus requiring its mention on Disclosure Statements for future sales. You may become the most unpopular figure in your neighborhood. A reluctance to collect and disseminate information regarding the instability of your area or publicity regarding negligence in any landfill placement around homes will not be confined to your municipal government.

As water is one of the primary causes for landslides, a more efficacious pursuit for remediation of a slide is in your sewer, storm and water systems. Some insurance companies will assist in this at no cost to you. Regulations and codes have changed over the years and it might be possible to force municipalities and utility companies to fix your problem if systems are found to be inadequate or out of code. However, informing your insurance company of your situations has additional repercussions of which you should be aware.

Insurance issues and problems:

You cannot hold a mortgage without homeowner insurance coverage. Your mortgage loan is linked to the value of your property. After a slide, your property is rendered valueless and you now have a hazard on your property which you, most likely, cannot remedy. This is grounds for a removal of your coverage and they may call-in your loan against your other assets. The relatively small amount involved in a home loan is no incentive for an insurance company to intervene to fix a costly slide and restore a property's value in order to protect the loan. The response from insurance and mortgage companies varies with each company. Some are willing to investigate the cause of a slide and such data can be useful in your sewer and storm sewer analysis, if they share it with you. This is generally done to assess the extent of the disaster and chances of repair, and to confirm that the company will not be liable. In this case, an assessment is made concerning your coverage and a "wait and see" will be placed on your policy and/or your coverage will continue, but with a loading request for additional monies to cover the added risk. This is done to cover the additional possibility that they would be involved in a personal injury case if someone is injured as direct result of the hazard on your property. Some companies will refuse to continue your insurance. However, you can appeal and you must do so. Your legislators can be of help in such cases.

Mine subsidence Insurance will compensate for you for your loss in land subsidence from mine collapse. However, coverage is limited and pay-out's can take many years. The program's annual budget is inadequate compared to the number of claims made upon it. And, this financial compensation does not address any of the other legal and insurance problems associated with a resulting landslide. Where slides are situated on a hillside, it is virtually impossible to prove mine collapse as any collapse will be blamed on the landslide. There is no compensation in this program from manmade subsidence from poorly engineered landfill.

Tax reduction applications:

Under the present circumstances, the only help government officials will suggest is pursuing property tax reassessments to achieve tax abatements. Outside a normal county reassessment, you can apply for a disaster reassessment; however, more than 50% of your house's structure must be affected. The chances are that in order to qualify under these rules, your home would probably have been condemned, making this an example of bureaucratic nonsense. If you are still in your home, you must consider carefully creating records of a reduced value for your property. If by some miracle the slide is fixed, such records can be used against you in any future sale price negotiation. You should be satisfied that your home is unsaleable for the foreseeable future. This judgment will help you prepare your case for property value reduction.

A case for property value and, therefore, tax reduction is based on several points. Your argument is that your home is valueless and unsaleable, and using the above knowledge, you should stress the following points. The property is potentially unsafe, and without repair, the situation is likely to worsen. You are required by law to state all knowledge of the slide on any Disclosure Statement for the remainder of the house's existence, even if the slide is repaired, in any future sale. A mortgage will be impossible to obtain as new home insurance coverage is very unlikely. If no mortgage is required and the homeowner is happy to live without insurance, there is still the question of legal liability. Any future owner will assume legal responsibility for the slide. This will make them vulnerable to litigation for personal injury or damage. They could be sued by visitors to the property, neighbors, the municipality, utility companies, or service providers. There is the risk of bankruptcy, tax liens, or property condemnation in the future. Death of the owner will only transfer these risks to their heirs. Abandonment of the property or moving the home to a new lot does not remove legal liability from the owner while it remains in their name.

For your case, you should be prepared with supporting evidence. Take photographs, a map of your area indicating the slide, data and maps showing the instability of your property, any media proof of your slide such as newspaper articles, insurance documents with the exclusion clause for landslides highlighted, and letters to legislators and any other officials contacted. A real estate evaluation from a local company is helpful. They will insist that a professional assessment is necessary. Do not waste your money. You will find that there is universal ignorance of the ramifications of landslides, even among professional evaluators. You will find that a local assessment is sufficient, but you will have to inform the agent regarding landslides.

You should be aware that at this level of assessments, their decision for a reduction will not be binding on your base rate. It will be ignored at the next reassessment, and any increase will be based on your previous valuation. You must appeal their decision, even if they have given you a reduction. The only means to set your base rate at the lower level is to argue your case in the Appeals Court. You may end up there anyway, as it is common for municipalities or School Boards to appeal large property value reductions. Ignorance of the full insurance and legal ramifications of landslides is universal even among some real estate lawyers. You can argue your own case, but be well prepared. The municipality, School Board and County will be present. The decision is an agreement that will be certified by the judge.