

Our “Common Enemy”: Where to Turn After Flooding Or Water Damage

Articles December 3, 2018

While California continues to be ravaged by wildfires in recent weeks, Western Pennsylvania residents have been dealing with the opposite problem over the past year: intense rainfall and flooding. According to the National Weather Service, Pittsburgh is on track to have one of its wettest years on record. In early September 2018, Pittsburgh had already surpassed its average yearly rainfall total of 38 inches.

To the distress of countless homeowners across the Pittsburgh region, the record rainfall has resulted in a mess of flooded basements and ruined yards. In response, many homeowners have contacted local elected officials and turned to their municipality’s Department of Public Works to request assistance to remediate flood and water damage. Unfortunately, your local municipality does not have funding earmarked for private flood remediation, and is barred by Pennsylvania law from donating municipal funds or resources to help with private cleanup efforts.

Article 9 of the Pennsylvania Constitution has long established that municipalities may not “appropriate money for, or loan its credit to, any corporation, association, institution or individual.” Pa. Const. Art. IX, § 9. Expenditures of public money must be for a public purpose. A municipality has no power to donate municipal moneys for private uses to any individual or company not under municipal control and having no connection to the municipality. E.g. *Harbold v. City of Reading*, 49 A.2d 817 (Pa. 1946). Specifically with respect to flooding and water damage, Pennsylvania prescribes to the “common enemy doctrine.” The doctrine views water, including stormwater runoff, as the “common enemy” of all people, who must act to protect themselves and their property as best they can from water flow. Pennsylvania courts have held that under this doctrine, municipalities cannot be held liable for incidental increases in surface water flow due to normal, gradual development in the municipality. *LaForm v. Bethlehem Twp.*, 499 A.2d 1373 (Pa. Super. 1985).

For events including localized flooding, the Pennsylvania Emergency Management Agency’s website directs individuals to seek assistance against our “common enemy” from a list of volunteer and nonprofit organizations. This list may be accessed at www.pema.pa.gov. Homeowners in flood-prone areas should also consult their insurance policies to see whether claims may be filed or if additional coverage is available.

For additional information contact Katie Janocsko.