

## **Contractors Must Comply With State Law If Performing Disaster Remediation Work**

by Tami LaGrone

Recovery efforts following Hurricane Harvey will be long felt. FEMA declared major disaster areas in 19 south Texas counties, and some reports estimate that the current damage to homes, vehicles, businesses in all sectors, and infrastructure is between \$50-70 billion. Reconstruction will take years. It is no surprise, then, that many Texas contractors, as well as out-of-state contractors, are heading to the Houston, Corpus Christi and Victoria, Texas metro areas looking to work. However, before making such a trip, contractors need to be aware of the state requirements for post-disaster construction work. Proceeding without following the statutory requirements could be costly.

Texas regularly experiences tornadoes, wind storms, hail storms, wildfires, floods and hurricanes which, naturally, require reconstruction efforts. While many honorable contractors engage in reconstruction efforts, many unscrupulous contractors use these natural disasters as a way to get-rich-quick. In response, the Texas Legislature passed the Disaster Remediation Contracts Statute in 2011 (codified in Chapter 58 of the Texas Business & Commerce Code). The law was enacted to address those contractors referred to as “storm chasers,” – contractors who target disaster-hit communities, take money up front and fail to perform the promised remediation construction work.

The Disaster Remediation Contracts Statute applies to “disaster remediation contractors” who are defined as those “engaging in the removal, cleaning, sanitizing, demolition, reconstruction, or other treatment of improvements to real property performed because of damage or destruction to that property caused by a natural disaster.” A “natural disaster” is defined as “the occurrence of widespread or severe damage, injury or loss of life or property related to any natural cause, including fire, flood, earthquake, wind, storm or wave action, that results in a disaster declaration by the governor or a local disaster declaration by a county judge.” And the law applies to project owners who are individuals, corporations, trusts, partnerships, associations or other private legal entities.

The law, which cannot be waived by any party to the agreement, requires that any construction disaster remediation project agreement be in writing, and contain the following disclosure statement in boldfaced type and at least 10 point font:

**“THIS CONTRACT IS SUBJECT TO CHAPTER 58, BUSINESS & COMMERCE CODE. A CONTRACTOR MAY NOT REQUIRE A FULL OR PARTIAL PAYMENT BEFORE THE CONTRACTOR BEINGS WORK PERFORMED, INCLUDING ANY MATERIALS DELIVERED.”**

Disaster remediation contractors are no longer allowed to require full or partial payment from the project owner before the work begins or materials are delivered, nor can they require partial payment in an amount that exceeds an amount reasonably proportionate to the work performed or materials delivered. A violation of the statute is also violation under the Texas Deceptive Trades Practices Act which allows the project owner to recover attorneys fees and up to three times the amount of damages against the contractor.

There is an exception to the applicability of the statute. The law does not apply to remediation contractors maintaining a physical business address in the county, or adjacent county, where the work is to be performed for one year prior to the date of contract. This exception allows truly local contractors to continue their business as usual. Nevertheless, contractors who intend to perform such disaster remediation construction work should make sure that their contract complies with the Disaster Remediation Contracts Statute before heading out to help.

Our firm can evaluate your contracts to determine if your contract complies with this and other Texas statutory requirements.

**TEXAS BUSINESS AND COMMERCE CODE**  
**TITLE 4. BUSINESS OPPORTUNITIES AND AGREEMENTS**  
**CHAPTER 58. DISASTER REMEDIATION CONTRACTS**

**Sec. 58.001. DEFINITIONS. In this chapter:**

(1) **"Disaster remediation"** means the removal, cleaning, sanitizing, demolition, reconstruction, or other treatment of improvements to real property performed because of damage or destruction to that property caused by a natural disaster.

(2) **"Disaster remediation contractor"** means a person who engages in disaster remediation for compensation, other than a person who has a permit, license, registration, or other authorization from the Texas Commission on Environmental Quality for the collection, transportation, treatment, storage, processing, or disposal of solid waste.

(3) **"Natural disaster"** means the occurrence of widespread or severe damage, injury, or loss of life or property related to any natural cause, including fire, flood, earthquake, wind, storm, or wave action, that results in a disaster declaration by the governor or a local disaster declaration by a county judge under Chapter [418](#), Government Code.

(4) **"Person"** means an individual, corporation, trust, partnership, association, or other private legal entity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 979 (H.B. [1711](#)), Sec. 1, eff. September 1, 2011.

Redesignated from Business and Commerce Code, Chapter [57](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(2), eff. September 1, 2013.

Amended by: Acts 2013, 83rd Leg., R.S., Ch. 270 (H.B. [762](#)), Sec. 1, eff. September 1, 2013.

**Sec. 58.002. APPLICABILITY OF CHAPTER.**

(a) Except as provided by Subsection (b), this chapter applies to a contract between a person and a disaster remediation contractor for the performance of disaster remediation services on property owned or leased by the person.

(b) This chapter does not apply to a contract between a person and a disaster remediation contractor for the performance of disaster remediation services on property owned or leased by the person if the contractor maintains for at least one year preceding the date of the contract a physical business address in:

(1) the county in which the property is located; or

(2) a county adjacent to the county in which the property is located.

Added by Acts 2011, 82nd Leg., R.S., Ch. 979 (H.B. [1711](#)), Sec. 1, eff. September 1, 2011.

Redesignated from Business and Commerce Code, Chapter [57](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(2), eff. September 1, 2013.

**Sec. 58.003. DISASTER REMEDIATION CONTRACT REQUIREMENTS; CERTAIN CONDUCT PROHIBITED.**

(a) A contract subject to this chapter must be in writing.

(b) A disaster remediation contractor:

(1) may not require a person to make a full or partial payment under a contract before the contractor begins work;

(2) may not require that the amount of any partial payment under the contract exceed an amount reasonably proportionate to the work performed, including any materials delivered; and

(3) shall include in any contract for disaster remediation services the following statement in conspicuous, boldfaced type of at least 10 points in size: "This contract is subject to Chapter [58](#), Business & Commerce Code. A contractor may not require a full or partial payment before the contractor begins work and may not require partial payments in an amount that exceeds an amount reasonably proportionate to the work performed, including any materials delivered."

Added by Acts 2011, 82nd Leg., R.S., Ch. 979 (H.B. [1711](#)), Sec. 1, eff. September 1, 2011.

Redesignated from Business and Commerce Code, Chapter [57](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(2), eff. September 1, 2013.

Amended by: Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.002(1), eff. September 1, 2013.

**Sec. 58.004. DECEPTIVE TRADE PRACTICE.** A violation of this chapter by a disaster remediation contractor is a false, misleading, or deceptive act or practice as defined by Section [17.46](#)(b), and any remedy under Subchapter E, Chapter [17](#), is available for a violation of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 979 (H.B. [1711](#)), Sec. 1, eff. September 1, 2011.

Redesignated from Business and Commerce Code, Chapter [57](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(2), eff. September 1, 2013.

**Sec. 58.005. WAIVER OF CHAPTER PROHIBITED.** A person may not waive this chapter by contract or other means. A purported waiver of this chapter is void.

Added by Acts 2011, 82nd Leg., R.S., Ch. 979 (H.B. [1711](#)), Sec. 1, eff. September 1, 2011.

Redesignated from Business and Commerce Code, Chapter [57](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(2), eff. September 1, 2013.