

Disaster Remediation--Important Statutory Requirements

With the devastating floods and other tragedies that have occurred recently across the state, it is important that builders and remodelers be aware of the implications of Chapter 57 of the Texas Business and Commerce Code that was enacted by HB 1711 effective September 1, 2011. The bill applies to contractors who remove, clean, sanitize, demolish, reconstruct, or otherwise treat improvements to real property as a result of damage or destruction to that property caused by a natural disaster. Specifically, it requires that a "disaster remediation" contract must be in writing and prohibits a "disaster remediation contractor" from requiring payment prior to beginning work or charging a partial payment in any amount disproportionate to the work that has been performed. However, the statute exempts contractors that have held a business address for at least one year in the county or adjacent county where the work occurs. This is one of the major updates of the [TAB Contracts Package](#) that is available for purchase and ready for download. As these tragic floods and other devastation subsides and the rebuilding begins, TAB members must be aware of the statutory contract limits on those who have not had a business address for at least one year in the county or adjoining county of the disaster. Ignoring these requirements could result in a deceptive trade practices violation. Please see the text of HB 1711 below for details. To purchase the [TAB Contracts Package](#), or if you need more information please contact your [local HBA](#) or go to www.TexasBuilders.org.

Bill Number: TX82RHB 1711

Date: 05-29-2011

ENROLLED

1 AN ACT

2 relating to disaster remediation contracts.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Title 4, Business & Commerce Code, is amended by

5 adding Chapter 57 to read as follows:

6 CHAPTER 57. DISASTER REMEDIATION CONTRACTS

7 Sec. 57.001. DEFINITIONS. In this chapter:

8 (1) "Disaster remediation" means the removal,

9 cleaning, sanitizing, demolition, reconstruction, or other

10 treatment of improvements to real property performed because of
11 damage or destruction to that property caused by a natural
12 disaster.

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

19 (3) "Natural disaster" means the occurrence of
20 widespread or severe damage, injury, or loss of life or property
21 related to any natural cause, including fire, flood, earthquake,
22 wind, storm, or wave action, that results in a disaster declaration
23 by the governor under Chapter 418, Government Code.

24 (4) "Person" means an individual, corporation, trust,

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1 partnership, association, or other private legal entity.

2 Sec. 57.002. APPLICABILITY OF CHAPTER. (a) Except as
3 provided by Subsection (b), this chapter applies to a contract
4 between a person and a disaster remediation contractor for the
5 performance of disaster remediation services on property owned or

6 leased by the person.

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

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

13 (2) a county adjacent to the county in which the

14 property is located.

15 Sec. 57.003. DISASTER REMEDIATION CONTRACT REQUIREMENTS;

16 CERTAIN CONDUCT PROHIBITED. (a) A contract subject to this chapter
17 must be in writing.

18 (b) A disaster remediation contractor:

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

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

25 (3) shall include in any contract for disaster
26 remediation services the following statement in conspicuous,
27 boldfaced type of at least 10 points in size: "This contract is

1 subject to Chapter 57, Business & Commerce Code. A contractor may
2 not require a full or partial payment before the contractor begins
3 work and may not require partial payments in an amount that exceeds
4 an amount reasonably proportionate to the work performed, including
5 any materials delivered."

6 Sec. 57.004. DECEPTIVE TRADE PRACTICE. A violation of this
7 chapter by a disaster remediation contractor is a false,
8 misleading, or deceptive act or practice as defined by Section
9 17.46(b), and any remedy under Subchapter E, Chapter 17, is
10 available for a violation of this chapter.

11 Sec. 57.005. WAIVER OF CHAPTER PROHIBITED. A person may not
12 waive this chapter by contract or other means. A purported waiver
13 of this chapter is void.

14 SECTION 2. The change in law made by this Act applies only
15 to a contract for the performance of disaster remediation services
16 that is entered into on or after the effective date of this Act. A
17 contract entered into before the effective date of this Act is
18 governed by the law in effect on the date the contract was entered
19 into, and the former law is continued in effect for that purpose.

20 SECTION 3. This Act takes effect September 1, 2011.

I certify that H.B. No. 1711 was passed by the House on April 26, 2011, by the following vote: Yeas 141, Nays 4, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 1711 on May 23, 2011, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1711 on May 28, 2011, by the following vote: Yeas 146, Nays 1, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1711 was passed by the Senate, with amendments, on May 20, 2011, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1711 on May 28, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor