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Texas Law: Repair and Remodeling Contracts after a Natural Disaster

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Given the recent tropical systems that have hit Texas including Laura and Beta (who still has not departed), there will undoubtedly be a need for disaster remediation contractors to address some of the damage recently caused. Contractors need to be aware that Texas law governs disaster remediation contractors. Out-of-town contractors performing disaster remediation in Texas need to be aware of Chapter 58 of the Texas Business and Commerce Code and its impact on post-natural disaster construction contracts. Disaster remediation includes, “removal, cleaning, sanitizing, demolition, reconstruction, or other treatment of improvements to real property performed because of damage or destruct to that property caused by a natural disaster.” An event is a natural disaster under this law if the Governor declares one, or a county judge declares a local disaster. This law DOES NOT apply to contractors who have maintained a physical business address in the county where the property being repaired is located or a county adjacent to the county in which the property being repaired is located.

Disaster remediation contractors may not require a person to make a full or partial payment under a contract before the contractor begins work. Those contractors who wish to take a materials deposit or have a homeowner make any other sort of pre-payment are going to risk violating this statute. The statute also prohibits a contractor from requiring that the amount of a partial payment under the contract exceed an amount reasonably proportionate to the work performed, including any materials delivered.

In addition to these restrictions on billing, Chapter 58 also requires the contract for disaster remediation services to contain 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.”

A violation of Chapter 58 is a false, misleading, or deceptive act or practice under the Texas Deceptive Trade Practices Act and subjects the contractor to some of the remedies provided in that act. Contractors may not get a homeowner to waive Chapter 58 in their contracts as a such a waiver is void under Texas law.

Accordingly, any disaster remediation contractor who wishes to do this sort of work in Texas will need to carefully consider its approach to the early funding of the project. Many of these projects may ultimately be



funded by insurance payments which experience some delay in processing. Having a line of credit, having the homeowner directly purchase materials, obtaining longer payment terms with subcontractors and vendors, or entering into an arrangement with a local contractor not subject to Chapter 58 of the Texas Business and Commerce Code may be avenues to consider in dealing with these limitations.