



Texas Association of Builders  
[www.TexasBuilders.org](http://www.TexasBuilders.org)

### **Disaster Remediation and Important Statutory Requirements**

With the devastating floods that have occurred recently across the state, it is important that builders, remodelers, and contractors fully understand and comply with the provisions set forth in Chapter 58 of the Texas Business and Commerce Code, which governs disaster remediation contracts. The resulting damage creates an immediate and dramatic need for builders, remodelers, and contractors to help get communities back on their feet. This demand often outstrips the available resources in the community, prompting the need for other builders, remodelers, contractors, as well as other laborers to travel from other parts of the state or country to assist. Unfortunately, this demand also attracts scammers who take upfront payments and either do substandard work or no work at all before vanishing and leaving their victims with little recourse. To help combat bad actors, in 2011, the Texas Legislature passed the Texas Disaster Remediation Act (“Act”), now codified in Chapter 58 of the Texas Business and Commerce Code. The Texas Association of Builders (“TAB”) created this document to provide additional guidance for builders, remodelers, contractors, and consumers entering into disaster remediation contracts.

#### **Scope and Applicability: Is the Project Covered by the Texas Disaster Remediation Act?**

It is critical to determine if the project is covered by the Act, which applies to “disaster remediation contracts.” Disaster remediation has a broad definition that applies to any “disaster remediation contractor” engaged in the removal, cleaning, sanitization, demolition, reconstruction, or treatment of improvements to real property necessitated by damage or destruction resulting from a natural disaster.<sup>1</sup> In other words, if you are dealing with an event that results in a disaster declaration, you are likely covered by the Act.

#### **Exceptions for Local Contractors.**

The Act does not apply 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.

#### **Certain Conduct Prohibited: What are the Act’s Crucial Legal Requirements?**

The Act mandates the following requirements:

1. The contract must be in writing;

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<sup>1</sup> 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.” Tex. Bus. & Com. Code § 58.001(2). A person “means an individual, corporation, trust, partnership, association, or other private legal entity.” Tex. Bus. & Com. Code § 58.001(4).

2. The contract is prohibited from requiring a person to make full or partial payment before the contractor begins work;
3. The contract cannot require a partial payment that exceeds an amount reasonably proportionate to the work performed, including any materials delivered;
4. The Act cannot be waived via contract or other means (any waiver of the Act is void); and
5. The contract must contain the following language 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.**

### **Enforcement and Risk of Noncompliance: What are the Penalties for Violating the Act?**

Failure to adhere to the above statutory requirements may be deemed a violation of the Texas Deceptive Trade Practices Act (“DTPA”), carrying civil penalties. A DTPA violation could expose builders, remodelers, and contractors to economic damages, mental anguish damages, attorneys’ fees, and even punitive damages if the builder, remodeler, or contractor acted knowingly or intentionally. The penalties for violating the Act are significant and provide property owners with protection from bad actors after a disaster. TAB members operating in disaster-affected areas must remain especially vigilant in adhering to contract standards.

### **TAB Contracts Package Update.**

TAB has updated its contracts package to reflect these statutory requirements. TAB members are strongly encouraged to utilize the latest version to ensure compliance with the Act. This is one of the major updates of the [TAB Contracts Package](#) 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. Ignoring the Act’s requirements could result in a deceptive trade practices violation. Please see [Texas Business and Commerce Code Chapter 58](#) for details.

### **What Actions Should Builders, Remodelers, and Contractors Take?**

- Review and understand the full text of [Texas Business and Commerce Code Chapter 58](#).
- Confirm whether your business qualifies for the one-year location exemption.
- Ensure all disaster-related remediation work is supported by a compliant written contract.
- Refrain from requesting or accepting payment before work commences unless exempt.

For additional guidance or to purchase the [TAB Contracts Package](#), please visit [www.TexasBuilders.org](http://www.TexasBuilders.org) or contact your [local HBA](#).