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## Disaster Remediation Contracts: Understanding the Law to Avoid a Second Disaster

In the aftermath of Hurricane Harvey, consumers and contractors should be aware of protections prescribed by the Texas Legislature for Disaster Remediation Contracts. Chapter 58 of the Texas Business and Commerce Code includes several important consumer protections. Consumers should be aware of these protections, and contractors should take care to avoid inadvertent violations.

This statute applies to a contractor engaged in “disaster remediation,” in a county subject to a disaster declaration. Those contracts are subject to certain notice provisions and limitations. A violation of Chapter 58 is considered a Deceptive Trade Practice and could subject a violator to both public and private remedies. The full text of Chapter 58 is found here: <http://www.statutes.legis.state.tx.us/Docs/BC/htm/BC.58.htm>.

The statute is designed to target “traveling” contractors. It doesn’t apply to a contractor who is performing “disaster remediation” in a county in which the contractor has maintained a physical business address for at least one year preceding the date of the contract. Likewise, it doesn’t apply to a contractor doing work in a county adjacent to the county where contractor has maintained such a physical business address for a year. But for a contractor without such a historical physical presence in a county where the work is to be performed or an adjacent county, then the provisions of Chapter 58 apply. Thus, if a contractor is doing “disaster remediation” outside of a county in which it has maintained a physical business address for at least one (1) year preceding the date of the contract or an adjacent county, then it must comply with the provisions of Chapter 58.

By way of example, a contractor who has maintained a physical presence in Bellville, Texas (Austin County) for a year could do work in Sealy (Austin County) or Richmond (Fort Bend County) without triggering the statute. But the same contractor could not work in Harris County or Galveston County without complying with Chapter 58.

If Chapter 58 applies, then the contract must be in writing and the contractor cannot require any payments under the contract before work begins. The contractor may not require that the amount of any partial payment under the contract to exceed an amount reasonably proportionate to the work performed, including any materials delivered. Additionally, the contract must contain a disclaimer in 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,**

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**including any materials delivered.”** Finally, the provisions of Chapter 58 cannot be waived. Any purported waiver of Chapter 58 is void.

Contractors and property owners alike should be aware of these significant consumer protections and regulation in connection with disaster remediation work.

Peckar & Abramson wishes all Texans, including its own Houston attorneys and staff, a safe and quick recovery from Hurricane Harvey. Peckar & Abramson employees are donating to the American Red Cross and the Houston Food Bank in support of those who have been affected by the storm, and they encourage others to do so as well.

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