

When is a General Contractor's License Required for Emergency Remediation Services?

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North Carolina has seen an increase in the need for building repair services following the damage caused by recent hurricanes, including Florence in 2018 and Dorian in 2019.

Frequently, these services must be performed on an emergency basis. These services are referred to by many different names but are typically referred to as remediation, restoration, or mitigation. The services typically involve removing wet and damaged materials and building components, drying the structure, and, sometimes, repair or reconstruction work. The lines between remediation, demolition, and repair are often blurred. Many emergency remediation companies, particularly those from out-of-state, may not realize that they are wading into territory that requires a general contractor's license in North Carolina. North Carolina has a fairly broad definition of what constitutes general contracting for which a license is required. This article will provide some general guidance about when a license is required.

Having the proper license to perform work on a building is vitally important in North Carolina for at least three reasons. *First*, performing work without a license when one is required is illegal and criminally punishable as a misdemeanor. *Second*, doing so also may precipitate administrative action by the North Carolina General Contractor's Licensing Board, and this may present an obstacle to subsequently obtaining a license. *And finally*, it has long been the rule in North Carolina that if a license was required for the work, an unlicensed contractor cannot enforce the subject contract or agreement. In other words, if an unlicensed contractor is not paid, the unlicensed contractor cannot use a lawsuit to recover the amount owed for the work performed, even if the owner is unjustly enriched by the work. The practical result is that the unlicensed contractor performs the work for free.

To avoid this result, every remediation contractor performing work in North Carolina should carefully evaluate whether their scope of work falls within North Carolina's definition of general contracting for which a license is required and, if so, comply with the requirements for licensure before entering into the contract and undertaking the work.

Whether a general contractor's license is required depends upon two factors: (1) the cost of the work; and (2) the nature of the work. The threshold dollar amount is \$30,000.00. A general contractor's license is not

required if the total cost of the work is less than \$30,000.00. Whether a license is required for work that exceeds \$30,000.00 depends upon the nature of the work.

The North Carolina General Statutes define general contracting as follows:

[A]ny person or firm or corporation who for a fixed price, commission, fee, or wage, undertakes to bid upon or to construct or who undertakes to superintend or manage, on his own behalf or for any person, firm, or corporation that is not licensed as a general contractor pursuant to this Article, the construction of any building, highway, public utilities, grading or **any improvement** or structure where the cost of the undertaking is thirty thousand dollars (\$30,000) or more, or undertakes to erect a North Carolina labeled manufactured modular building meeting the North Carolina State Building Code, shall be deemed to be a "general contractor" engaged in the business of general contracting in the State of North Carolina.

If the work falls within this definition, a general contractor's license generally is required. For purposes of remediation, the pivotal factor here appears to be whether the work involves the construction of any "improvement" where the cost of the work is \$30,000.00 or more.

Performing remediation work to arrest further damage, such as removing wet carpet and drying the structure with fans or dehumidifiers, is clearly not construction and should not require a license. This would include work that does not involve construction. Work that can be categorized as repairs, however, may constitute the construction of an improvement for which a license is required.

North Carolina courts have recognized that the term "improvement" does not have a definite and fixed meaning but does connote the performance of construction work. Few cases have squarely addressed what type of work constitutes an improvement under the statute. However, courts have found that the following constituted the construction of an improvement requiring a license: repairs to a home that had been damaged by fire; adding a roof over an existing structure; and the renovation of apartments that included correction of dry rot, installation of new storm doors and windows, new paint, new wallpaper, and new carpet.

Additionally, the contractor license classifications used by North Carolina tend to support the notion that even demolition constitutes an improvement. For instance, the classifications for Building Contractor and Residential Contractor both specifically cover "all building construction and demolition activity[.]"

These cases and classifications suggest that the term improvement has a broad meaning in North Carolina that includes all types of "construction work." This makes sense. If construction exceeding \$30,000 in cost is being undertaken, this almost certainly would constitute an "improvement" and require a license.

A fairly recent unpublished opinion for a case decided by the North Carolina Court of Appeals, however, suggests that not all repair work may fall within the definition of general contracting and require a license. By issuing an unpublished opinion, the Court has made it clear that the opinion has no precedential value and is not controlling for future cases. Nonetheless, the opinion is instructive as to how careful North Carolina courts will look at the word "improvement." In the 2018 case, an unlicensed contractor filed a lawsuit against the owner of a shopping center that was damaged during Hurricane Matthew. The unlicensed contractor alleged that it was owed \$212,776.15 for "mitigation work" and \$139,854.58 for "reconstruction work." The owner responded by asserting that the contractor was not entitled to recover because it was unlicensed and the cost of the work exceeded \$30,000. The trial court agreed with the owner and dismissed the unlicensed contractor's lawsuit. The unlicensed contractor appealed to the Court of Appeals.

On appeal, the Court recognized that North Carolina's law is not clear as to what types of repair work are covered under the definition of improvement. The Court noted that while the construction of new walls,

floors, etc. would certainly require a license, "the cases do not provide black letter rules for determining whether the mere repair of an existing wall or other improvement is considered 'the construction of an improvement' covered under [the general contracting statute]." The Court determined that because there are no black letter rules, determining whether certain work constitutes an improvement for purposes of licensure depends on the totality of the factual circumstances in each case. The case involved an early dispositive motion, which meant the Court didn't have evidence of the specific services provided and could not delve into the issue further. Unable to resolve the issue without more development of the actual facts, the Court reversed the dismissal and sent the case back to the trial court to determine whether the nature of the specific work performed by the subcontractor required a license. The unlicensed contractor incurred the cost of the dismissal and the appeal.

Although the opinion, in this case, gives limited guidance as to what types of repair work may not be covered under the definition of improvement, it does suggest that simply repairing or patching building components, like a wall, *may* not require a license in all circumstances. The case, however, cannot be understood to mean that simply calling work "repairs" means that no license is required. Whether a license is required for repairs depends on the factual circumstances of each individual case.

This case and the others touching on the issue make one thing clear: except for work that constitutes an obvious "improvement" and requires a license if the cost is more than \$30,000, there are no bright-line rules or tests to determine whether certain work constitutes an improvement. Rather, that determination is a factual one that must be made in each individual case. Because of this uncertainty, it is imperative for remediation contractors to carefully review and analyze the nature and scope of the work involved to determine whether a license is required and, if so, to comply with the requirements for licensure before committing labor, materials, and services to remediation work. This is not an issue that contractors can afford to get wrong or they may find themselves unable to collect what is owed to them for the work they performed.

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