

## Recovering Attorneys' Fees for Breach of Contract

Article By:

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Texas lawyers finally have the ability to recover attorneys' fees on behalf of their clients in all breach of contract matters, regardless of whether the other party is an individual, corporation, limited partnership, or limited liability company. The Texas Legislature has expanded the scope of Chapter 38 of the Texas Civil Practices and Remedies Code, which currently only allows for recovery of attorneys' fees from an individual or corporation, for actions arising out of breach of contract (Tex. Civ. P. & Rem. Code Ann. § 38.001 (West)).

The current language of Chapter 38 has perplexed attorneys because it omits a plethora of business entities that are often parties to a contract. As a result of the literal language of Chapter 38, Texas courts have offered little to no relief to those parties seeking to recover attorneys' fees from other business entities. In *Fleming & Assocs., L.L.P. v. Barton*, the 14th Court of Appeals explained that neither the term "individual" nor "corporation" is defined in Chapter 38, and thus the ordinary meanings of these terms should be applied (425 S.W.3d 560, 575 (Tex. App. —Houston [14th Dist.] 2014, pet. denied)). Further, there was no dispute that Fleming & Associates was neither an individual nor a corporation, but a limited liability partnership —precluding the applicability of Chapter 38 and leaving Barton with no avenue for recovery of attorneys' fees for breach of a joint venture agreement (see also *Choice! Power, L.P. v. Feeley*, 501 S.W.3d 199, 214 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (holding Section 38.001 of the Civil Practice and Remedies Code does not permit recovery against a limited partnership *Hoffman v. L & M Arts*, No. 3:10-CV-0953-D, 2015 WL 1000838, at \*1 (N.D. Tex. Mar. 6, 2015), aff'd, 838 F.3d 568 (5th Cir. 2016) (limited liability company is not a person under Chapter 38))).

The Texas Legislature has finally taken notice of these decisions and passed H.B. No. 1578. Under H.B. No. 1578, Chapter 38 will be revised to the following language:

- In this section, "organization" has the meaning assigned by Section 1.002, Business Organizations Code.
- A person may recover reasonable attorney's fees from an individual or organization other than a quasi-governmental entity authorized to perform a function by state law, a religious organization, a charitable organization, or a charitable trust in addition to the amount of a valid claim and costs, if the claim is for:

1. rendered services;
2. performed labor;
3. furnished material;
4. freight or express overcharges;
5. lost or damaged freight or express;
6. killed or injured stock;
7. a sworn account; or
8. an oral or written contract.

Under the revised Chapter 38, a party can recover attorneys' fees from an organization as defined in Section 1.002 of the Texas Business Organizations Code. The new revisions extensively expand the scope of Chapter 38, now allowing recovery against a corporation, limited or general partnership, limited liability company, business trust, real estate investment trust, joint venture, joint stock company, cooperative, association, bank, insurance company, credit union, savings and loan association, or other organization, regardless of whether the organization is for-profit, nonprofit, domestic, or foreign (Tex. Bus. Orgs. Code Ann. § 1.002 (West)). The newly expanded Chapter 38 will offer an avenue of recovery to parties seeking attorneys' fees from entities other than corporations, as long as they file suit after September 1, 2021.

H.B. No. 1578 has been signed by the governor and will be effective September 1, 2021.

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