

# BluePrint

For Design Professionals

## Newsflash! A New California Indemnity Statute

By Peter L. Stacy

On April 28, 2017, Governor Brown signed into law Senate Bill 496 (Cannella). The Bill, which is now codified in *California Civil Code* §2782.8, amended the statute to provide greater protection for design professionals. Under the prior law, design professionals that entered into contracts with public agencies where there was an indemnity provision would only be required to indemnify, including the duty and cost to defend, the public agency for claims arising out of the negligence, recklessness, or willful misconduct of the design professional. For private works projects, there was no such statutory limitation but a troubling court case on the duty to defend - *UDC v. CH2M Hill* decision. The Court found that the design professional had an immediate duty to defend even if the design professional was ultimately found to have not been negligent.

As amended, Section §2782.8 shall apply to all contracts entered into on or after January 1, 2018, wherein a contract that purports to indemnify the indemnitee is unenforceable, except to the extent that the claims arise out of the “negligence, recklessness, or willful misconduct of the design professional.”

In addition to providing this new protection for design professionals in private works projects, the new law also provides additional protection for those design professionals performing services for public agencies. That new pertinent language is as follows:



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“In no event shall the cost to defend charged to the design professional exceed the design professional’s proportionate percentage of fault.”

The law provides that the duty to defend as well as the duty to indemnify are limited as provided in this section and it may not be waived or modified by the parties.

SECTION 1. Section 2782.8 of the Civil Code is amended to read:

2782.8 (a) For all contracts, and amendments thereto, entered into on or after January 1, 2018, for design professional services, all provisions, clauses, covenants, and agreements contained in, collateral to, or affecting any such contract, and amendments thereto, that purport to indemnify, including the duty and the cost to defend, the indemnitee by design professional against liability for claims against the indemnitee, are enforceable, except to the extent that the claims against the indemnitee arise out of, pertain to, to relate to the negligence, recklessness, or willful misconduct of the design professional. In no event shall the cost to defend charged to the design professional exceed the design professional’s proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the design professional shall meet and confer with the other parties regarding unpaid defense costs. The duty to indemnify, including the duty and the cost to defend, is limited as provided in this section. This section shall not be waived or modified by contractual agreement, act, or omission of the parties. Contractual provisions, clauses, covenants, or agreements not expressly prohibited herein are reserved to the agreement of the parties. (b) All contracts and all solicitation documents, including requests for proposal, invitations for bid, and other solicitation documents for design professional services are deemed to incorporate by reference the provisions of this section. (c) For purposes of this section, “design professional” includes all of the following: (1) An individual licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, and a business entity offering architectural services in accordance with that chapter. (2) An individual licensed as a landscape architect pursuant to Chapter 3.5 (commencing with Section 5615) of Division 3 of the Business and Professions Code, and a business entity offering landscape architectural services in accordance with that chapter. (3) An individual registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professional Code, and a business entity offering professional engineering services in accordance with that chapter. (4) An individual licensed as a professional land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code, and a business entity offering professional land surveying services in accordance with that chapter. (d) This section shall apply only to a professional service contract, or any amendment thereto, entered into on or after January 1, 2018.

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