

Effective 5/8/2018

13-8-7 Contract for design professional services -- Agreements to indemnify.

- (1) As used in this section:
- (a) "Design professional" means:
 - (i) an individual licensed under:
 - (A) Title 58, Chapter 3a, Architects Licensing Act;
 - (B) Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act; or
 - (C) Title 58, Chapter 53, Landscape Architects Licensing Act; or
 - (ii) a nongovernmental entity engaged in the business of providing services that require a license described in Subsection (1)(a)(i).
 - (b) "Design professional services" means:
 - (i) professional services within the scope of the practice of architecture as defined in Section 58-3a-102;
 - (ii) professional engineering or professional land surveying as defined in Section 58-22-102; or
 - (iii) professional services within the scope of the practice of landscape architecture as defined in Section 58-53-102.
 - (c)
 - (i) "Design professional services contract" means a contract under which a design professional agrees to provide design professional services:
 - (A) to a governmental entity; or
 - (B) for an improvement owned or to be owned by a governmental entity.
 - (ii) "Design professional services contract" does not include a construction contract, as defined in Section 13-8-1.
 - (d) "Indemnification provision" means a covenant, promise, agreement, or understanding in, in connection with, or collateral to, a design professional services contract that requires the design professional to:
 - (i) indemnify or hold harmless any person from or against liability for damages other than liability for damages to the extent caused by or resulting from:
 - (A) the design professional's breach of contract, negligence, recklessness, or intentional misconduct; or
 - (B) the design professional's subconsultant's negligence;
 - (ii) defend any person from or against a claim alleging liability for damages, including a claim alleging:
 - (A) the design professional's breach of contract, negligence, recklessness, or intentional misconduct; or
 - (B) the design professional's subconsultant's negligence; or
 - (iii) reimburse any person for attorney fees or other costs incurred by the person in defending against a claim alleging liability for damages, except to the extent the attorney fees or costs were incurred due to:
 - (A) the design professional's breach of contract, negligence, recklessness, or intentional misconduct; or
 - (B) the design professional's subconsultant's negligence.
 - (e) "Governmental entity" means the same as that term is defined in Section 63G-7-102.
 - (f) "Improvement" means the same as that term is defined in Section 78B-2-225.
 - (g) "Subconsultant" means a person with whom a design professional contracts to provide a service related to or part of the design professional services that the design professional agrees to perform under a design professional services contract.

(2) An indemnification provision is void.

(3)

(a) A design professional shall perform design professional services under a design professional services contract consistent with the professional skill and care ordinarily provided by other design professionals:

(i) with the same or similar professional license; and

(ii) providing the same or similar design professional service:

(A) in the same or similar locality;

(B) at the same or similar time; and

(C) under the same or similar circumstances.

(b)

(i) Except as provided in Subsection (3)(b)(ii), a design professional services contract may not establish a standard of care different from the standard of care described in Subsection (3)

(a).

(ii) A design professional services contract may require a design professional to perform design professional services consistent with a specialized design expertise if the nature of the project that is the subject of the design professional services contract reasonably requires the specialized design expertise.

(c) A provision in a design professional services contract that purports to waive or conflicts with a provision of Subsection (3)(b) is void.

(4) The provisions of this section apply to a design professional services contract executed on or after May 8, 2018.

Enacted by Chapter 222, 2018 General Session