

# Indemnity Prohibition

On January 1, 2013, new rules governing indemnification in construction contracts went into effect under [SB 474](#) in California. The new law impacts commercial real estate, and public and residential projects.

The big picture with respect to commercial construction contracts is that the attempt to shift responsibility for active negligence or willful misconduct through indemnity will be void and unenforceable unless certain exceptions apply.

Under SB 474, indemnity of a commercial property owner who is not a contractor or supplier will be unenforceable in contracts entered into after January 1, 2013, if it relieves the property owner of their own “active negligence” and imposes such liability on the contractor, subcontractor or supplier.

Likewise, the indemnity provision may be void if it attempts to make a subcontractor responsible for insuring or indemnifying the GC or another subcontractor to the extent that any such claims are due to “active negligence or willful misconduct” of the indemnified party, or for “defects in design furnished” to the subcontractor, or claims beyond the scope of work performed by the subcontractor.

In light of SB 474, property owners and contractors in California should now seek additional protections to the extent their indemnity provisions may be limited in new construction contracts moving forward.

Civil Code Section 2782.05(b) lists at least 13 exceptions under which the new indemnity limitations do not apply. Accordingly, these limitations should be carefully considered when structuring new contracts and determining whether SB 474 will impact the allocation of risk. Also, legal counsel should be sought with respect to changing construction contracts in the public sector and for residential projects, which are different than those outlined above.

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