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LEGAL



Indemnity versus Release

by Debra B. Norris

Parties in the construction process are concerned about potential liability and include language in their contracts to shift the risk of liability or to relieve a party of liability before construction begins. Parties need to understand the difference between an indemnity provision and a release provision.

An indemnity provision does not prevent a future claim by the other party to the agreement. An indemnity provision shifts the risk of claims or lawsuits by others. The construction industry can be a dangerous business and can lead to personal injury or property damage to those who are not involved in the construction contract. Either party to the construction contract could be sued by others who suffer harm to their person or property. An indemnity provision seeks

to shift the risk of those third party claims.

In an indemnity provision, one party agrees to pay the legal expenses to defend and the costs of successful claims by third parties. An indemnity provision does not prevent a claim by the other contracting party.

A release, on the other hand, is an agreement that one party to the con-

struction contract will not sue the other party to the construction contract. Releases are often used to settle disagreements between parties after a dispute has occurred. As part of a settlement of an existing dispute, a party will agree to surrender its own claim against the other.

If either an indemnity or a release is used to relieve a party its own future negligence, the language of the indemnity or release must be expressly stated and be in bold letters or all caps to bring it to the other parties attention. Typical indemnity language is "indemnify, save, protect, hold harmless." Typical release language is "release, discharge, relinquish."

Know the difference between these provisions and be careful that you have identified the particular claims that you mean. Caselaw suggests that a general release of "all claims" is not sufficient. State the type of claims that you mean,

for instance, negligence, breach of contract, or violations of the Deceptive Trade Practices Act.

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