

WHO ARE WE?

An organization of 90 engineering and professional service firms in the State of Maryland

WHO DO WE REPRESENT?

Over 7,000 employees including:

Engineers	Scientists
Architects	Technical Specialists
Land Surveyors	Planners

CONTACT INFORMATION

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Duty to Defend – Equity and Fairness

WHAT IS THE ISSUE?

As a matter of public policy, Maryland law currently voids some forms of broad-based indemnification clauses in contracts relating to construction-projects. Many contracts still require A/E firms and design professionals to indemnify and to assume a duty to defend various other parties with respect to claims caused by others but which the design professional has no legal liability.

A duty to defend is a concept emanating from insurance policies, where an insurer agrees to defend its insured against claims, without regard to the underlying merit of the claims. When a duty to defend is incorporated into a design professional's contract, this obligates the design professionals to pay for the cost of defending against claims asserted against the design professional's client, without regard to the underlying merit of the claims. Design professionals are not in the insurance business, and do not have the ability to purchase insurance to guard against this risk.

WHY ARE THESE CHANGES IMPORTANT?

Modification to Maryland statutory language is needed to ensure that A/E firms and design professionals are not

required to pay for or assume upfront duty to defend claims caused by others, through no fault of the design professional, so that such risks are fairly borne by the responsible parties.

- A design professional's responsibility for claims should be tied to damages caused by their negligence, not for being treated like insurance carriers.
- Small and disadvantaged businesses are disproportionately affected by duties to defend.
- By limiting a design professional's liability to their actual fault, design professionals do not need to price their services to account for uninsurable risk, which is good public policy.

The modifications proposed in no way prevent an owner from recovering damages caused by the fault or negligence of a design professional.

Want to learn more, watch this 2-minute video:

