

Florida statute on limitation of liability

By Colleen Palmer, Esq. first published May 15, 2013

The Governor of Florida recently signed a bill which will dramatically increase design professionals' ability to contractually limit their individual liability under certain circumstances. With the signing of Senate Bill 286, the Florida legislature creates Florida Statute § 558.0035, which will become effective July 1, 2013. The law alleviates to some degree the disappointing appeals court decision in June 2010 holding that a limitation of liability provision in an agreement between the client and the design professional firm was invalid and unenforceable as to a geologist in his individual capacity. *Witt v. La Gorce Country Club, Inc.*, 35 So.3d 1033 (Fla. 3d DCA 2010).

The statute provides that a design professional employed by a business entity is not individually liable for damages resulting from negligence occurring within the course and scope of a professional services contract if all of the following conditions are met:

- a. The **contract is made between the business entity and a claimant** or with another entity for the provision of professional services to the claimant;
- b. The **contract does not name as a party** to the contract **the individual employee** or agent who will perform the professional services;
- c. The contract includes a prominent statement, **in uppercase font that is at least 5 point sizes larger than the rest of the text**, that, pursuant to this section, an individual employee or agent may not be held individually liable for negligence;
- d. The **business entity maintains any professional liability insurance required under the contract**; and
- e. Any **damages are solely economic** in nature and the damages do not extend to personal injuries or property not subject to the contract.

The term "business entity" is defined as any corporation, limited liability company, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in Florida. The statute extends the definition of "design professional" to include geologists along with architects, interior designers, landscape architects, engineers, and surveyors.

We recommend adding the following language to professional services agreements governed by Florida law:

"PURSUANT TO FLORIDA STATUTE § 558.035, AN INDIVIDUAL EMPLOYEE OR AGENT OF [INSERT NAME OF FIRM] MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE OCCURRING WITHIN THE COURSE AND SCOPE OF PROFESSIONAL SERVICES RENDERED UNDER THIS PROFESSIONAL SERVICES CONTRACT."

As noted above, the statute is very specific with regard to the requirements of the limitation of liability statement and design professionals should ensure the language is prominently displayed with the appropriately sized text in uppercase font. While the statute does not provide guidance on the meaning of "prominently displayed," design professionals may want to place the language on the first page of the professional services contract; immediately prior to the signature blocks in the contract; or as the second paragraph of the limitation of liability provision generally limiting the firm's liability. Our regular readers may recall that we recommend the following limitation of liability language:

"To the fullest extent permitted by law, the total liability, in the aggregate, of Design Professional and Design Professional's officers, directors, employees, agents, and consultants to Client and anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to Design Professional's services, the Project or this Agreement, from any cause or causes whatsoever, including but not limited to, negligence, strict liability, breach of contract or breach of warranty shall not exceed the total compensation received by Design Professional under this Agreement, or the total amount of \$_____, whichever is greater."

The enactment of this statute is a very favorable development in Florida for design professionals.

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