

Amendments to Arizona's Purchaser Dwelling Act Signed Into Law

By Kurt M. Zitzer

Arizona Senate Bill 1271 was signed into law on April 10, 2019. The Bill amends various parts of Arizona's Purchaser Dwelling Act.¹ For those who practice in the area of construction law, and particular construction defect litigation, a review of the amendments and new sections is essential as many of the previous parts of the Act have changed. This article will focus on two limited sections of the Act that impact express indemnity and additional insured coverage.

For attorneys practicing, and insurance professionals adjusting, in the area of construction defect—when confronted with a claim of professional negligence or general liability in the construction setting—they should first analyze whether the claim involves a "dwelling action" which falls within the Act. Unlike other construction settings such as public or commercial construction, this Act has serious implications for risk spreading through express indemnity and additional insurance.

First and foremost, the Act applies to both contractors as well as design professionals and specifically broadly defines "Architect-Engineer Professional Service Contract" as used within the Act. With respect to contractual indemnification, the Arizona Legislature declared that a contract that "[p]urports to insure, to indemnify or to hold harmless the promisee from or against liability for loss or damage is against public policy of this state and is void only to the extent that it purports to insure, to indemnify or to hold harmless the promisee from or against liability or loss or damage resulting from the negligence of the promisee or the promisee's indemnitees, employees, subcontractors, consultants or agents other than the promisor." The amendment to the Act,² in the context of dwellings, is a change from the existing Arizona Anti-Indemnity Statute that made void indemnity in instances of the indemnitee's sole negligence and/or willful misconduct. The consequence of this modification in the scope of permissible indemnity is that for purposes of this Act, there never is a valid agreement where the indemnitor will accept the tort liability of the indemnitee. From a coverage perspective, this is significant because none of these indemnity agreements should qualify as an "insured contract" as used in subpart f. of the definition of the term when analyzing the standard CGL exclusion b.³

¹ Specifically, it amends A.R.S. § 12-1362 and § 12-1363, adding § 12-1364, and modifying Arizona's existing Anti-Indemnity statute A.R.S. § 32-1159, by adding A.R.S. § 32-1159.01 applied to dwelling construction contracts.

² A.R.S. § 32.1159.01.

³ ISO Exclusion b. states that the insurance does not apply to:

In the context of additional insurance, the amendment to the Act now states that “[a]ny additional insured endorsement furnished pursuant to an agreement or collateral to a construction contract involving a dwelling does not obligate the insurer to indemnify the additional insured for the percentage of fault that is allocated to the additional insured. This subsection does not limit an insurer’s duty to defend an additional insured pursuant to the terms and conditions of an additional insured endorsement.” What is interesting about circumstances where the Act may apply, is that traditional additional insured endorsements offering indemnity coverage for damages “arising out of” or “caused in whole or in part”, are now statutorily limited to only providing an additional insured for indemnity caused directly by the named insured.

These are but a few of the important amendments to the Act, and those who practice in the area of construction law or adjust construction defect claims in Arizona, should familiarize themselves with the changes.



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“Bodily injury” or “property damage” for which the insured is obligated to pay damages by reason of the assumption of liability in contract or agreement.” The exclusion applies unless the contract is an “insured contract” and subpart f. of the “insured contract” definition requires that for an indemnity agreement to be covered the Named Insured must assume the tort liability of another party.