

# CLAIMS BRIEF



## TRANSFERRING RISK THROUGH CONTRACT INDEMNIFICATION

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Generally, a person or entity who owns a premises is always considered ultimately responsible for any liability exposure which occurs on the premises. However, liability and property risk can be transferred from one party to another through agreement or contract. The means of transferring that risk is called indemnification. The principle of indemnification is an agreement by one party to reimburse another who has been held liable for a loss. *Poe v. Philadelphia Casualty Co.* 118 Md. 347 (1912) *Strong v. Prince George's County*, 77 Md. App 177 (1988).

In order to protect themselves, local governments should require an indemnification clause in all contracts or agreements for services provided by independent contractors. In addition, an indemnification agreement should be required for any lease or agreements relating to the use of a member property. This will transfer risk from the governmental entity to another party.

The Local governments should consider the following elements considering indemnification:

- Requests for bids and bid specifications with a potential service provider should contain a requirement that the service provider will be required to indemnify the local government from liability or property damage. In addition, the bid specifications should state that the service provider will be required to provide a Certificate of Insurance which names the local government as an additional insured of the provider.

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- All executed contracts and agreements should contain specific language which holds the contractor responsible for all costs relating to any claim or lawsuit including defense costs. The indemnification language should be similar in style, font and format to the rest of the contract so that it is recognizable as an integral part of the contract. Problems may arise if the indemnification language is written as “small print” or included as an addendum to the contract.
- The indemnification clause should specify that the local government as well as its employees are indemnified under the contract. Recently, an independent contractor attempted to evade responsibility because the indemnification clause only named the governmental entity and not its employees.
- Make sure that the service provider actually submits a Certificate of Insurance which names the local government as an additional insured under the policy.
- Law enforcement agencies which approve the secondary employment of their officers should also try to require the secondary employer to execute an indemnification agreement which makes the secondary employer responsible for the actions of the police officer while performing services for the secondary employer.

Occasionally, a local government may enter into an agreement to use the facilities of another entity such as a Board of Education and be required to provide indemnification for that entity. The indemnification clause should specifically state that the local government agrees only to assume liability for the wrongful or negligent conduct of the local government or its employees. The local government should never agree to assume liability for the negligent conduct of the other party.

Transferring risk through indemnification is an important aspect of managing the risk of local government and controlling expenses associated with defending claims and lawsuits. By following these rules you will be able to prevent your entity from assuming unnecessary risk of liability exposure.

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