

CALIFORNIA CIVIL CODE INDEMNITY STATUTES

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Division 3 (obligations), Part 4 (particular transactions), title 12 (indemnity)

2772 Indemnity is a contract [a promise of one party, the indemnitor,] to save another [the indemnitee] from a legal consequence of conduct.]

2773 Indemnity is void as to a future act that is known unlawful when committed.

2774 Indemnity is valid for a non-felonious past act, even if then known wrongful.

2775 Indemnity for acts of a person includes acts of his agents.

2776 Indemnity of many persons applies to each, unless contrary intention appears.

2777 Indemnitor is jointly and severally liable with indemnitee in favor of injured parties.

2778 Unless a contrary intention is expressed, (1) indemnity against “liability” can be recovered against when indemnitee becomes liable; (2) indemnity against “claims, demands, damages, costs” can be recovered against only when indemnitee pays; (3) indemnity against “claims” etc. embraces costs of defense incurred in good faith; (4) indemnitor obligated to defend actions and proceedings at option of indemnitee, or indemnitee can choose to conduct the defense; (5) if indemnitor neglects to defend after request, he is conclusively liable for recovery suffered by indemnitee in good faith; (6) if indemnitor does not receive notice or is not permitted to control defense, recovery is only presumptive evidence of indemnitor’s obligation; (7) a stipulation of conclusiveness of judgment is inapplicable if indemnitee negligently failed to establish a good defense.

2779 Indemnitor who, at request of party violating a duty, engages to answer in damages therefor, is entitled to be reimbursed.

2782 (a) Indemnity by any indemnitor in a “**construction contract**” is void against **sole negligence or willful misconduct of, or defects in design furnished by, indemnitee or its agents**. Does not affect insurance contracts or workers’ compensation statutory obligations. Exceptions: 2782.1, .2, .5, .6.

(b) Indemnity by subcontractors, suppliers and general contractors in contracts respecting **public agency** construction contract is void against the agency’s **active negligence**. Exceptions: 2782.1, .2, .5.

(c) Indemnity by any subcontractor, supplier or general contractor in contracts respecting **private owner** construction contract is unenforceable against owner’s **active negligence**. Exceptions: Owner acting as contractor or supplier; 2782(d); and 2782.1, .2, .5.

(d) indemnity **or defense or insurance procurement obligation** by subcontractor in contracts respecting **residential** construction contract is unenforceable against **negligence [of any type]** of builder or contractor or their other subcontractors, or defects in design provided by builder or contractor, or work not in subcontractor’s written scope. Does not affect any party’s Civil Code 910(a) rights, insurer’s duties under *Presley* (2001), and builder’s and subcontractor’s duties under [SB800].

As to clause (d), clauses (e) through (i) apply.

(e) Subcontractors and builders or contractors can agree on defense and timing of payment of defense costs. Builder or contractor must make tender of claim or portion thereof. (f) Remedies for default by subcontractor in

July 2025. Only a summary and not legal advice! Omits details and exceptions. Read the statute.

paying its defense cost share. (g) Equitable indemnity between parties OK. (h) Equitable indemnity with other parties OK. (i) Defect is defined per [SB800].

2782.05 (a) **Indemnity or defense or insurance obligation of subcontractor on any construction contract** is void against **active** negligence or willful misconduct of **contractor, CM or another subcontractor** or defects in design furnished by such parties, or work not in subcontractor's written scope. Does not affect insurer's duties under *Presley* (2001) or insurer's rights under *Bass* (1997).

(b) Many exceptions: residential construction; direct contracts with agencies 2782(b) or with private parties 2782(c), wrap-ups, breach of contract or warranty, insurance procurement obligations covering the subcontractor's own acts and omissions, surety indemnities, workers' comp, government immunity, obligations to procure OCP and property insurance, contracts with design professionals, and bonding agreements.

(c) California law applies notwithstanding choice of law principles. (d) No waiver. (e) Can agree on defense, timing of defense cost allocations, etc. similar to clauses implementing 2782(d).

2782.1 Can fully indemnify neighboring **accommodation party** permitting entry.

2782.2 A large, audited, self-insured owner can fully indemnify **inspection engineer** for its negligence (not willful misconduct) above \$250K.

2782.5 Can negotiate **allocations, releases, liquidations, exclusions and limitations of liability** for design defects and contract breaches.

2782.6 Can fully indemnify engineer or geologist for negligence (not gross negligence or willful misconduct) over \$250K or higher negotiated threshold for concealed **hazmats** if indemnitor is potentially responsible for those materials. This exception is not applicable to public entities. (e) Doesn't affect indemnity for third party damages.

2782.8 **Design professional indemnity and defense** obligation unenforceable except for professional's **negligence, recklessness or willful misconduct**. **Defense cost obligation limited to percentage fault** (if any defendant doesn't pay its share, defendants are to "meet and confer"). Section inapplicable if there is a project-specific liability policy with primary coverage for E&O and general liability, or if design professional is JV member of design-builder, or if a state agency is the indemnitee. Does not affect Public Contract Code 1104.

2782.9 In a **residential project with a wrap-up**, subcontractor cannot be required to contractually indemnify another subcontractor. Equitable indemnity between parties OK for uninsured matters. OK to require contributions to cover retentions and deductibles.

2782.95 In a **residential project with a wrap-up**, must disclose basis for insurance credits and contributions.

2782.96 In a **public non-residential project with a wrap-up**, must disclose basis for insurance credits and contributions.

2783 Broad **definition** of "construction contract."

2784 **Definition** of "design defect."

2784.5 Indemnity in **hauling, trucking or cartage contract** against the indemnitee's sole negligence or willful misconduct is void. Applies to indemnitee's contractors unless they are under indemnitor's direct supervision and control.

Prohibited Indemnity Claims on PUBLIC Projects		
Indemnifying Party	Residential Projects	Nonresidential Projects
Contractor	<p>Anyone's sole negligence or willful misconduct [§2782(a)]¹</p> <p>Public Agency's active negligence [§2782(b)(1)]²</p>	<p>Anyone's sole negligence or willful misconduct [§2782(a)]¹</p> <p>Public Agency's active negligence [§2782(b)(1)]²</p>
Supplier	<p>Anyone's sole negligence or willful misconduct [§2782(a)]¹</p> <p>Public Agency's active negligence [§2782(b)(2)]²</p>	<p>Anyone's sole negligence or willful misconduct [§2782(a)]¹</p> <p>Public Agency's active negligence [§2782(b)(2)]²</p>
Subcontractor	<p>Anyone's sole negligence or willful misconduct [§2782(a)]¹</p> <p>Negligence of builder (as defined in §911), or GC or contractor unaffiliated with builder, in connection with construction defect claims [§2782(d)]</p> <p>Builder (as defined in §911), or GC or contractor unaffiliated with builder, for defects in design furnished to subcontractor [§2782(d)]</p> <p>Builder (as defined in §911), or GC or contractor unaffiliated with builder, to the extent a claim arises outside subcontractor's scope of work [§2782(d)]</p> <p>Public Agency's active negligence [§2782(b)(2)]²</p>	<p>Anyone's sole negligence or willful misconduct [§2782(a)]¹</p> <p>Active negligence of Public Agency [§2782(b)(2)],¹ Owner [§2782(c)(1)],² or GC, CM, or other subcontractor [§2782.05(a)]³</p> <p>GC, CM, or other subcontractor for defects in design furnished to subcontractor [§2782.05(a)]³</p> <p>GC, CM, or other subcontractor to the extent a claim arises outside subcontractor's scope of work [§2782.05(a)]³</p>
<p>1 Subject to exceptions under §§2782.1, 2782.2, 2782.5, and 2782.6 (see above)</p> <p>2 Subject to exceptions under §§ 2782.1, 2782.2, and 2782.5 (see above)</p> <p>3 Subject to exceptions under §2782.05(b)(see above)</p>		

	Prohibited Indemnity Claims on PRIVATE Projects	
Indemnifying Party	Residential Projects	Nonresidential Projects
Contractor or Supplier	<p>Anyone's sole negligence or willful misconduct [§2782(a)]¹</p> <p>Owner's active negligence, except where (i) owner is acting as contractor or supplier, or (ii) owner is performing project on his/her single-family dwelling [§2782(c)(1), (3)]²</p>	<p>Anyone's sole negligence or willful misconduct [§2782(a)]¹</p> <p>Owner's active negligence, except where owner is acting as contractor or supplier [§2782(c)(1)]²</p>
Subcontractor	<p>Anyone's sole negligence or willful misconduct [§2782(a)]¹</p> <p>Owner's active negligence, except where (i) owner is acting as contractor or supplier, or (ii) owner is performing project on his/her single-family dwelling [§2782(c)(1), (3)]²</p> <p>Negligence of builder (as defined in §911), or GC or contractor unaffiliated with builder, in connection with construction defect claims [§2782(d)]</p> <p>Builder (as defined in §911), or GC or contractor unaffiliated with builder, for defects in design furnished to subcontractor [§2782(d)]</p> <p>Builder (as defined in §911), or GC or contractor unaffiliated with builder, to the extent a claim arises outside subcontractor's scope of work [§2782(d)]</p>	<p>Anyone's sole negligence or willful misconduct [§2782(a)]¹</p> <p>Owner's active negligence, except where owner is acting as contractor or supplier [§2782(c)(1)]²</p> <p>GC, CM, or other subcontractor's active negligence [§2782.05(a)]³</p> <p>GC, CM, other subcontractor for defects in design furnished to subcontractor [§2782.05(a)]³</p> <p>GC, CM, other subcontractor to the extent a claim arises outside subcontractor's scope of work [§2782.05(a)]³</p>
<p>1 Subject to exceptions under §§2782.1, 2782.2, 2782.5, and 2782.6 (see above)</p> <p>2 Subject to exceptions under §§ 2782.1, 2782.2, and 2782.5 (see above)</p> <p>3 Subject to exceptions under §2782.05(b)(see above)</p>		