



# Legal Trends for Business Officers

Association of Chief Business Officials (ACBO)  
Spring 2016 Conference  
May 24, 2016

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# Agenda

- Architect Indemnification
- Public Records Act
- Boundary Disputes

# Architect Indemnification

# Indemnification

- What is Indemnification?
  - Risk shifting
  - A party agrees to assume the liability of the other
  - Akin to becoming the insurer for the other party

# Indemnification (continued)

- Architect indemnification
  - Contract should provide that the Architect will indemnify the district
  - Architect will often ask the district to indemnify it
- The indemnity provision survives the expiration of the contract

# Broad Defense & Indemnification in Favor of Architect - BAD

*District shall defend, indemnify and hold harmless Architect from and against any and all claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs, and expenses (including without limitation reasonable attorney's fees and costs) arising out of, relating to, or resulting from, this agreement.*

# Broad – Most Favorable to District

*To the fullest extent provided by law, Architect shall defend, indemnify and hold harmless District, including its employees, directors, Board, agents, volunteers, and affiliates, from and against any and all claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs, and expenses (including without limitation reasonable attorney's fees and costs) arising out of, relating to, or resulting from, Architect's, or its consultant's or agent's, negligent acts, errors, or omissions, recklessness, or willful misconduct, directly or indirectly related to the performance of Services, the Project, or this Agreement, including, without limitation, the payment of all consequential damages.*

# Current Law

- In addition to any contractual limitations on architect's duty to defend District, statutory limitations also apply:
  - Defense obligation enforceable only where claim against District relates to architect's negligence, willful misconduct or recklessness.
- “Defend” can include up-front payment for the District's legal costs.



# Insurance Trend

- Architects less inclined to indemnify agencies because their insurers are refusing to underwrite contracts where architect promises to defend/indemnify.

# Current Law – Hypothetical

- Roof of college gymnasium collapses and injures guest.
- Guest brings claim against the District, the contractor, and the architect, alleging that the gym was negligently designed.
- The District's contract with the architect contains a duty to defend provision.
- ***The architect has a duty to pay up-front for the District's defense costs.***

# SB 885 – Proposed Bill

- Architects would only have a duty to defend themselves.
- Provisions requiring architect to pay up-front for the District's defense costs would become unenforceable.
- Recoupment possible if architect found to be at fault.

# SB 885 – Hypothetical

*Same hypothetical involving collapsed roof.*

- Under SB 885 . . .
  - Architect pays for own defense.
  - District pays for own defense.
  - If architect found to be at fault, District can seek reimbursement for defense costs (to extent of architect's degree of fault).

# Public Records Act

# Open Government: The Public Records Act

- Gov't Code Section 6250:
  - "...[A]ccess to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."
- Favors disclosure.
- Certain exceptions.
- Anyone (person or entity) can request records.

# Public Records Covered by the Act

- Applies to “any writings containing information relating to the conduct of the business, prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics”.

# Public Records Covered by the Act

- Types of public records
  - Financial data
  - Personnel records
  - Salary information
  - Employment contracts
  - Expenditures and reimbursements
  - Minutes of regular and special meetings
  - Emails, faxes, photographs and photocopies



# Exemptions

- Examples of exempt records:
  - Preliminary Drafts
  - Pending Litigation
  - **Communications with Legal Counsel\***
  - Personnel Records
  - Library Circulation Records
  - Financial Data
  - Catch-all: The public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record

# Recent Development – Inadvertent Release of Privileged Documents

- District receives PRA request and inadvertently releases documents that are attorney work product and attorney-client privileged.
- Has the District waived confidentiality as to these documents under the PRA?

**NO**

# Pending Issue – Disclosure of Attorney Billing Statements

- District receives PRA request seeking production of attorney billing statements
- Must the bills be produced?

**STAY TUNED**

# Pending Issue – Private Communications

- District receives PRA request seeking communications between a Board member and the president of a construction company on District-related matters.
- Some responsive docs are emails sent/received on the Board member's personal email account while he was using his personal phone.
- Must these emails be produced?

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# SB 272

- Went into effect January 1, 2016.
- Expands the scope of the PRA to require a local agency, *except* a “local educational agency,” to take an inventory of its “enterprise systems” and post a catalogue of such systems on the agency’s website.
- Seeks to make agency’s data management practices more transparent.

# Boundary Disputes

# Boundary Disputes

- Real-life challenges involving neighbors:
  - Neighbors want property.
  - Neighbors claim property.
  - Neighbors want property repaired.

# Neighbors Want Property

- District owns land.
- Land is not needed for classroom purposes.
- Neighbors are interested in purchasing the land.
  - Not so simple.
  - Various procedures and requirements for CCD's to sell surplus property.



# Neighbors Claim Property

1. Neighbor claims ownership of a section of District's land, asserting that District or previous landowner entered into an implied boundary agreement with the neighbor.

## Requirements:

- Uncertainty as to true boundary line.
- Agreement b/w coterminous owners fixing the line.
- Acceptance and acquiescence in the line so fixed for a period equal to the statute of limitations or under such circumstances that substantial loss would be caused by a change of its position.

# Neighbors Claim Property

2. Neighbor claims ownership of District property by virtue of adverse possession / prescriptive easement.
  - Generally not applicable to public land.

# Neighbors Want Property Repaired

- Landlocked marshland owned by State abuts District property on one side, neighbor's residential property on other side.
- Requires cleanup; falling trees cause disruption to neighbors.
- Should the District cover the cost of clean-up?
  - Legal v. business v. political implications.

# Questions?

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