



## Contractual Indemnification in Maryland, District of Columbia, and Virginia: Subcontractor's Indemnification of General Contractor

District of Columbia	<p>Parties may include indemnity terms to recover for their own negligence, provided the indemnity terms reflect that intention:</p> <p><i>See Parker v. John Moriarty &amp; Assoc.</i>, 189 F.Supp.3d 38, 42-43 (D.D.C. 2016)</p>	<p>“In the District of Columbia, parties are free to enter into indemnification contracts. An indemnity provision, however, should not be construed to permit an indemnitee to recover for his or her own negligence unless the court is firmly convinced that such an interpretation reflects the intention of the parties. If a party expects to shift responsibility for its negligence ... the mutual intention of the parties to this effect should appear with clarity from the face of the contract. The question then is whether a contract provision <i>clearly reflects</i> such a purpose. Thus, if the alleged intention to provide this type of protection for the indemnitee is at all ambiguous, this standard is not satisfied.” (internal citations omitted).</p>
Maryland	<p>Indemnity terms requiring the subcontractor to indemnify the general contractor for the general contractor's own negligence <b>are prohibited by statute</b>: Maryland Code, Cts. &amp; Jud. Proc., § 5-401</p> <p><b>(Indemnity Agreements Relating to Construction Services Prohibited)</b></p>	<p>“A... contract or agreement relating to architectural, engineering, inspecting, or surveying services, or the construction...of a building... purporting to indemnify the promisee against liability for damages arising out of bodily injury to any person or damage to property caused by or resulting from the <i>sole negligence</i> of the promisee or indemnitee, or the agents or employees of the promisee or indemnitee, is against public policy and is void and unenforceable.” (emphasis added).</p>
Virginia	<p>Indemnity terms requiring the subcontractor to indemnify the general contractor for the general contractor's own negligence are prohibited by statute: Virginia Code, § 11-4.1</p> <p><b>(Certain Indemnification Provisions in Construction Contracts Declared Void)</b></p>	<p>“Any provision contained in any contract relating to the construction...of a building...by which the contractor... purports to indemnify or hold harmless another party to the contract against liability for damage arising out of bodily injury to persons or damage to property suffered in the course of performance of the contract, caused by or resulting <i>solely</i> from the negligence of such other party... is against public policy and is void and unenforceable.”</p>