

# **NEW 2018 SNOW REMOVAL CONTRACTS LAW CAN CAUSE LEGAL PROBLEMS FOR MULTIFAMILY HOUSING PROVIDERS**

When the weather turns colder, accidents are likely to increase on rental properties, due to snow and ice. Many property managers utilize the service of third-party vendors to assist in removing snow and ice from their property to protect residents. The legislature passed a law ([leg.colorado.gov/sites/default/files/documents/2018A/bills/2018a\\_062\\_signed.pdf](http://leg.colorado.gov/sites/default/files/documents/2018A/bills/2018a_062_signed.pdf)) that provides more protection to the snow removal company, and fewer protections for the customers of those snow removal vendors. If you want to review the entire law, click on the link in this paragraph.

Essentially, this new law puts limits on the type of language an owner or property manager can utilize in a vendor contract. The law prohibits clauses that allowed snow removal customers to require vendors to indemnify and protect customers from all lawsuits related to snow removal. Indemnify is another way of saying that someone is agreeing to pay the bill or paying the costs on behalf of someone else. The new law prohibits broad indemnification language. The new law impacts everyone that manages real property and hires a snow removal vendor.

Let us take a look at how this may play out with some fictional companies, in a hypothetical situation. Management Co. manages Blackacre for the Owner. Management Co wants to hire Snow Vendor to remove snow and ice when it snows more than 2 inches. Management Co tells Snow Vendor, if you want to do work at Blackacre, you have to sign off on our standard vendor contract. The standard vendor contract contains indemnification language that protects Management Co and Owner, requiring the Snow Vendor to be financially responsible for any damages or liability resulting from Snow Vendor's actions or inactions with regard to removing snow and ice.

Under the old law, Snow Vendor would have signed the standard vendor contract and proceeded to do business with Blackacre. If there was a slip and fall at Blackacre, and a personal injury attorney made a demand on Management Co. Management Co. would then notify their insurance, the Owner and the Snow Vendor. Owner and Snow Vendor would contact their insurance. Snow Vendor would have financial responsibility to defend Management Company due to the broad indemnification language in the contract.

***Enter the new law, that makes such indemnification contract provisions unenforceable.***

Now Snow Vendor may sign Management Co's standard vendor contract, but the law will make those indemnification clauses invalid. Management Co. will end up hiring Snow Vendor without those indemnity protections. The new law does not mean that Snow Vendor's no longer have responsibility for doing a good job, or that they cannot be sued for doing a bad job. The new law just changes the grounds on which a customer (Owner or Management Co.) can pursue Snow Vendor. The Snow Vendor could still be pursued for something that they failed to perform, such as failing to remove snow or ice in breach of contract. However, that is a very

different situation from Snow Vendor agreeing to defend their customer from any claim for damages related to any act by Snow Vendor. Under the new law, when Management Co. receives the demand letter from the personal injury attorney, they would still notify Snow Vendor along with their own insurance company. However, Snow Vendor would not have a contractual obligation to indemnify Management Co. from any liability. Snow Vendor could have liability if they breached the contract, but they would not be responsible to defend the Owner and Management Co. in the lawsuit.

Interestingly enough, the new law does have a few exceptions, where broad indemnification language is still permitted in contracts. The restriction does not apply to contracts for services with airports, public utilities, public roads or contracts with public bodies. It also excepts insurance policies. The insurance policy exception may open the door for an Owner or Management Company to require that they be listed as an additional insured on a Vendor's insurance.

It is fairly common for any slip and fall claim to be handed over to an insurance company for both Owner and Management Co. to handle. That will not change under the new law. What changes is how the Owner and Management Co. can defend against the lawsuit. Slip and fall lawsuits related to snow will continue in Colorado, but the nature of the legal fight will change. Management companies can continue the best practice of being diligent about hiring responsible and insured Snow Vendors, documenting the work performed, and keeping good records of the snow removal efforts undertaken.