§ 402-a. Defense and indemnification in civil actions against employees of the New York city housing authority. 1. As used in this section, the term "employee" shall mean the members, including the chairman of the New York city housing authority appointed by the mayor of the city of New York, officers, employees, or a former employee, his or her estate or judicially appointed personal representative. The term "employee" shall not include an independent contractor.

2. At the request of the employee, and upon compliance by the employee with the provisions of this section, the New York city housing authority shall provide for the defense of an employee in any civil action or proceeding in any state or federal court, arising out of any alleged act or omission which the New York city housing authority finds occurred while the employee was acting within the scope of his or her public employment and in the discharge of his or her public duties and was not in violation of any rule or regulation of the New York city housing authority at the time the alleged act or omission occurred. This duty to provide for a defense and indemnification shall not arise where such civil action or proceeding is brought by or on behalf of the New York city housing authority against the employee. A member of the New York city housing authority police force, when within the geographical limits of his or her jurisdiction, although excused from official duty at the time, for the purposes of this section, shall be deemed to be acting in the discharge of duty when engaged in the immediate and actual performance of a public duty imposed by law and such public duty performed was for the benefit of all the citizens of the community, and the New York city housing authority derived no special benefit in its corporate capacity.

3. The New York city housing authority shall indemnify and save harmless its employees in the amount of any civil judgment obtained against such employees in any state or federal court, or in the amount of any settlement of a claim approved by the New York city housing authority provided that the act or omission from which such judgment or settlement arose occurred while the employee was acting within the scope of his or her public employment and in the discharge of his or her public duties and was not in violation of any rule or regulation of the

New York city housing authority at the time the alleged damages were sustained.

4. The duty to indemnify and save harmless prescribed by this section shall not arise where the injury or damage resulted from an intentional wrongdoing, or recklessness on the part of the employee.

5. Nothing in this section shall authorize the New York city housing authority to indemnify or save harmless an employee with respect to punitive or exemplary damages, fines or penalties.

6. The duty to defend and indemnify and save harmless prescribed by this section shall be conditioned upon (i) delivery by the employee to the chairman, general manager or general counsel of the New York city housing authority at the office of the New York city housing authority of the original or a copy of any summons, complaint, claim, process, notice, demand or pleading within ten days after the employee is served with such document, and (ii) the full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against the New York city housing authority based upon the same act or omission, and in the prosecution of any appeal. Such delivery shall be deemed a request by the employee that the New York city housing authority provide for his or her defense pursuant to this section. In the event that the New York city housing authority shall assume an employee's defense and thereafter the employee fails or refuses to cooperate in the formation or presentation of his or her defense, the court shall permit the New York city housing authority to withdraw its representation ten days after giving written notice to the employee of its intention to discontinue such representation.

7. In the event that the act or omission upon which the court proceeding against the employee is based was or is also the basis of a disciplinary proceeding by the New York city housing authority against the employee, representation and indemnification by the New York city housing authority, as set forth in this section, may be withheld (i) until such disciplinary proceeding has been resolved and (ii) unless the resolution of the disciplinary proceeding exonerated the employee as to

such act or omission.

8. Subject to the conditions set forth in this section, the employee shall be entitled to representation by the general counsel of the New York city housing authority or by any attorney or attorneys designated by the general counsel, provided, however, that the employee shall be entitled to be represented by private counsel of his or her choice in any civil action or proceeding whenever the New York city housing authority determines that representation would be inappropriate, or whenever a court, upon appropriate motion or otherwise by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by private counsel of the employee's choice. The general counsel of the New York city housing authority shall notify the employee in writing of such determination that the employee is entitled to be represented by private counsel. Provided, however, that the New York city housing authority may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the New York city housing authority to such private counsel from time to time during the pendency of the civil action or proceeding.

9. Any dispute with respect to representation of multiple employees by a single counsel or the reasonableness of attorneys' fees or the amount of litigation expenses shall be resolved by the court upon motion or by way of a special proceeding.

10. The benefits of this section shall inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party nor shall any provision of this section be construed to affect, alter or repeal any provision of the workers' compensation law.

11. The provisions of this section shall not be construed in any way to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

12. Except as otherwise specifically provided in this section, the provisions of this section shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, member, officer or employee of the New York city housing authority, or any right to defense and/or indemnification provided for any member, officer or employee by, in accordance with, or by reason of, any other provision of state, federal or local law or common law.

13. Every action or proceeding instituted pursuant to the provisions of this section shall be commenced pursuant to section one hundred fifty-seven of this chapter and within one year and ninety days. No action or proceeding instituted pursuant to the provisions of this section shall be prosecuted or maintained against the New York city housing authority, or an officer or employee thereof, unless notice of claim or demand shall have been made and served upon the New York city housing authority in compliance with section one hundred fifty-seven of this chapter and within ninety days after the claim arises.

14. If any provision of this section or the application thereof to any person or circumstance be held unconstitutional or invalid, in whole or in part by any court, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this section or the application of any such provision to any other person or circumstance.

15. The provisions of this section shall apply to the actions and proceedings set forth herein notwithstanding any inconsistent provisions of state or local law.