

## **Risk Management in a Sustainable World**

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This session will highlight the legal and risk management issues confronting all participants to the design, construction, operation and maintenance of sustainable or Green buildings.

Over the past several years organizations such as the World Green Building Council (WorldGBC), the Canada Green Building Council (CaGBC), the U.S. Green Building Council (USGBC) and Green Building Councils from many other countries throughout the world have enlisted professionals from virtually every sector of the building industry to assist in expediting the adoption of building practices that result in energy-efficient, healthier and environmentally friendly places to live and work.

There is ample evidence that developing green buildings can yield substantial savings over the life of a facility. While studies reveal that building green may entail an initial increase in up-front costs, such projects often yield life cycle savings of greater than ten (10) times the initial investment amount for green design over the life of the building<sup>1</sup>. Studies have shown that green buildings often result in significant health benefits ranging from increased productivity and employee satisfaction to lower absenteeism due to illness. These and other benefits derived from building green may mitigate potential damage to the environment, reduce depletion of precious resources and reduce potential exposure to liability. For instance, improved indoor environmental quality may result in fewer lawsuits alleging sick building syndrome.

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<sup>1</sup> *The Costs and Financial Benefits of Green Buildings: A Report to California's Sustainable Building Task Force*. Principal author: Greg Kats of Capital E. 2003.

Whether the green design and construction requirements are imposed by contract or legislatively, there may be serious ramifications for the failure to achieve applicable standards. Such penalties may include, among other things, the loss of funding or grant eligibility; rescission of tax credits; fines and/or penalties; imposition of liquidated damages; adverse marketing perception and corresponding reduction of valuation; or breach of lease or other obligation, to name a few. In many instances, such risks may be transferred – at least in part - by use of contractual provisions, including indemnity language. Equally important to carefully negotiating and crafting contract language is the need to minimize the likelihood of a dispute over the applicable standard for designing and constructing “green” and corresponding requirements. This break out session will highlight these and other areas of concern that all stakeholders should consider and address at the inception of any green building project. This partial list merely identifies some of the numerous legal and risk management issues which should be considered as part of any such project. While many, if not all, of these issues are found on both traditional and green building projects, the analysis and outcome may differ by jurisdiction.

The green building movement has and continues to provide a wealth of opportunities to all members of the design, engineering, construction, real estate and development world while resulting in the production of energy-efficient, healthier and environmentally sustainable places to live and work. At the same time, prudent parties to the process will consult with a qualified professional to review and analyze existing and potential legal and risk management issues and considerations.

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