

*Construction
Contract Issues And
Tips For Green
Projects*

Practising Law Institute

July 15, 2010

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Overview

- Green Projects Have Unique Contractual Issues
- Standard Contract Forms Often Times Do Not Address These Issues
- Suggested Approach

GBCI Does Not Certify The Project

- Who Is Liable?
- Multi-Party Issue
- Analogous To Delay
- Avoid Strict Liability Clauses
- How Can This Risk Be Managed?

GBCI Does Not Certify The Project

- Suggested Approach: LEED Resp. Matrix

Prereq. / Credit	Design Driven	GC Driven	Owner Perfm'd	Docmnt.

LEED ® *Registration And Certification Process*

- Who Does What?
- Who Pays Fees?
- Certification Considered An Approval?
- Suggested Approach
 - Owner Responsible For LEED Applications
 - Owner Pays Fees
 - LEED Online
 - Prerequisite & Credit Documentation

Substantial / Final Completion

- Certification Required?
- Delay Damages
- Final Payment
- Suggested Approach
 - Certification Not Required For SC / FC
 - Final Payment
 - Complete LEED Templates And Provide Supporting Documentation

Changes

- Some Changes May Prevent Credits From Being Achieved
- What Are The Parties' Duties When A Change Is Proposed?
- Suggested Approach
 - Contractor Input For Information Only
 - Owner Responsible

Separate Contractors

- Whole Project Considered For Certification
- Separate Contractors May Impact The Process
- Suggested Approach
 - Owner Should Carefully Manage
 - Owner Responsible For Impact

Green Damages

- Types
 - Increased Utility Costs
 - Decreased Building Value
 - Loss Of Tenants
 - Loss Of Tax Credits/Deductions Or Financing
 - Decreased Worker Productivity
- Standard Waiver Of Consequential Damages Clause

Green Damages

- Five Scenarios Can Trigger Damages
 - Certification Achieved, But Certain Credits Not Earned
 - Certification Not Achieved
 - Owner Solely Prevented
 - Contractor Solely Prevented
 - Owner & Contractor Each Independently Prevented
 - Owner & Contractor Collectively Prevented

Green Damages

- Suggested Approach
 - Menu Format For Each Scenario
 - No Remedy
 - Correction
 - Actual Damages
 - Liquidated Damages
 - Apportioned

Other Considerations

- Definitions
- Scheduling
- Allowances
- Submittals For Green Components

Questions

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