

# Green Building And Property Coverage

By Deborah A. Vennos & Rebecca Levy-Sachs of Robinson & Cole LLP



Deborah A. Vennos



Rebecca Levy-Sachs

Over the past thirty years, there has been an international paradigm shift from short-sighted environmental practices to long-term conservation movements. Often cited as the first global environmental treaty, the Kyoto Protocol was initially adopted in the mid-1990s. Since then, global summits on environmental practice, such as the United Nations' Earth Summit, have been held regularly throughout the world. In December, 2009 the UN summit in Copenhagen drew world leaders.

While the United States has moved at its own pace, it has focused on environmental measures since the 1970s. The United States Green Building Council (USGBC), founded in 1993 as a nonprofit organization, is "committed to a prosperous and sustainable future for our nation through cost-efficient and energy-saving green buildings." As of 2007, USGBC was composed of 10,000 organizations, including building owners, occupants, real estate developers, facility managers, architects, designers, engineers, contractors, product and building system manufacturers, government agencies, and nonprofits. As of 2009, its membership has doubled to 20,000 organizations.

The effects of green construction on the national economy are staggering. USGBC asserts that green construction is an essential factor in reviving the US (and possibly global) economy. Green building is one of the fastest-growing industries, increasing between 30 to 60 percent annually in products and services. Green construction projects increased from \$10 billion in 2005 to \$49 billion in 2008. These values will increase to between \$96 billion and \$140 billion by 2013. Investment in green building makes sense because savings in utilities can compensate for the up-front investment costs in green construction within three to ten years, depending on the size of the building and what level of certification the owner seeks.

## I. Is Green Construction Here to Stay?

Green construction is a growing trend that is here for at least the foreseeable future. As to national incentives for sustainable development, the economic stimulus plan allocates the following substantial sums as indicated:

- \$ 4.5 billion for green upgrades of federal buildings
- \$ 5.0 billion for residential green retrofit
- \$ 6.3 billion for state energy efficiency and conservation
- \$11.0 billion for electrical grid upgrades
- \$ 6.0 billion for new loans for wind, solar and biofuel
- \$ 2.5 billion for bonds to finance wind, biomass, geothermal, hydro, landfill gas, and trash into energy

With respect to statewide incentives, as of May 2009, twenty-four individual states have adopted renewable energy standards, which require energy providers to acquire a minimum percentage of power from renewable energy sources by a specific date. New York has instituted the most ambitious requirements, mandating its energy providers to obtain 24 percent of their power from renewable sources by 2013. Five additional states have nonbinding goals for adopting renewable energy (North Dakota, South Dakota, Utah, Virginia, and Vermont). Municipal and town incentives for green construction range from requiring LEED or LEED-like construction for all new buildings over a certain square footage or dollar amount to providing property tax credits and density bonuses for green construction.

## II. LEED and Alternatives to LEED

The "Leadership in Energy and Environmental Design" (LEED) system is a "third party certification program and the nationally accepted benchmark for the design, construction and operation of high performance green buildings." There is a LEED certification process for new construction, existing buildings (operations and maintenance), commercial interiors, core and shell, schools, and homes. USGBC is also developing a certification process for retail and health care facilities. In addition, LEED for neighborhoods extends the LEED certification process beyond the building structure to the neighborhood in which it is located.

LEED is based on a point certification system that measures performance of construction as it relates to five environmentally sensitive areas: (1) energy savings, (2) water efficiency, (3) carbon dioxide emissions, (4) indoor environmental quality, and (5) stewardship of resources and sensitivity to their impacts. The point system classifies new construction as either certified (40 to 49 points), silver (50 to 59 points), gold (60 to 79 points), and platinum (80 or more points). USGBC is the most widely known sustainable construction group, but other organizations, such as Green Globes and the NAHB National Green Building Program, are also recognized in the construction industry and provide reliable standards for green building construction and renovation.

## III. The Impact of Green Building on Property Insurance

Insurance carriers have joined the green revolution by offering green endorsements to traditional property coverage policies, which provide coverage for energy efficiency and green improvements. Liberty Mutual, Affiliated (FM), Travelers, Zurich, The Hartford, and Gen Re have all added some version of this coverage in the past year. Coverage for green buildings is a relatively new product, but some similarities are emerging. There are two basic coverages: green building alternatives and green building recertification or enhancement. Both are subject to limits based on total coverage amount or percentage of total amount paid. Other coverages with green aspects include expanded building commissioning and expanded demolition and debris removal.

Insurers are issuing policies with replacement provisions such as the following:

- If there is a direct physical loss or damage to the covered premises, we will pay for the reasonable increased cost to rebuild or replace lost or damaged portions of property
- Using "green" material alternatives that are of comparable quality and function

With respect to insuring green recertification or enhancement, policies include provisions such as the following:

If direct physical loss or damage covered premises was previously approved to a level of green certification pre-loss by a "green authority," we will pay for:

1. Reasonable additional expense for engineer to design replacement or repair and to test or recalibrate systems
2. Reasonable registration and recertification fees required by the "green authority."

The rapid development of green construction has, of course, created the need for green construction contractors, architects, and engineers. Green building, in turn, creates coverage issues relative to casualty, commercial general liability, and errors and omissions policies (water leaks and mold from green roofs, failure to achieve contracted-for certification, and failure of solar panels to achieve advertised quantity of electricity) as they relate to these professionals. Management of these risks can be achieved by specific policy language.

Rebecca Levy-Sachs is a Partner and the Managing Attorney in the Florida office. Deborah Vennos is an Associate, and a PhD scientist, and works in the Hartford office. Their bios and contact information, as well as information about the firm's practice areas and representative matters are set forth in detail at the Robinson & Cole website, at [www.rc.com](http://www.rc.com).