

Issues to consider before insuring a green building

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Rising public awareness of the environmental challenges is a major factor in the [popularization of sustainable construction](#). However, with the [benefits that sustainable construction offers](#), there are new liability risks and more possible litigation. [As a result of heavily advertised sustainable construction](#), owners and end users tend to develop much higher expectations for performance, return on investment, healthy work

environment, quality of indoor air, and improvements in staff productivity. Due to the high expectations coupled with the lack of knowledge among some of the stakeholders, many disputes have arisen between [parties in the construction industry](#).

In one of the lawsuits in the U.S., the owner of an office building with [a LEED Silver certificate](#) filed a claim against the architect because the tenants of the building demanded lower rent as the building was [falsely advertised](#). The architect promised healthier quality of indoor air, an increase in employees' productivity, and effective indoor lighting; however, the employees' sick days increased, and many employees complained of eye strain. [This case remains unsolved](#).

Another lawsuit included a luxury condominium housing complex in New York, where the owner took developers to court as he filed a [claim](#) for \$1.5 million for breach of contract and fraud, alleging that the buildings were not as green as were advertised; this case remains unresolved. In another lawsuit, the owner promoted his building as [LEED Gold certified](#) to attract tenants, based on the promise of the architect. As a result of money and schedule constraints, the building did not satisfy the requirements of [LEED Gold](#), and so the owner sued the architect. [This case also remains unresolved](#).

Despite the accelerated growth in the number of green projects, most disputes that make it to court [regarding defective green products](#) remain unsolved. The whole idea of economically and sustainably conscious design and construction is relatively new, and the available information is usually inadequate to prove that the green projects reached their sustainable goals. Most U.S. states do not require any reporting on the environmental [footprint for newly built projects](#), but when more information and energy-saving requirements become available, many of the outstanding lawsuits in U.S. courts are expected to be resolved once and for all.

Common issues with insurance policies in green construction

[The main sources of disputes](#) in sustainable construction emerge from adaptation to climate change, ensuring continuity of performance for energy efficiency, drafting contracts, (not) meeting a required certification, and delays of governmental approvals. The disputes in green construction are administrative and legal in nature. The administrative disputes do not rely on legal procedures to be solved; instead, they use other procedures, such as mediation, arbitration, contractual changes or [informal procedures for resolution](#). On the other hand, if these disputes are not resolved by any of these approaches, they become legal disputes, where parties rely on litigation [in order to resolve the dispute](#). Litigation is by far the most expensive method for resolving disputes, but it can end at any point if [the parties reach a settlement](#).

Litigation and insurance are interrelated, and since many green aspects of construction projects [are still not protected](#), there are not as many lawsuits filed on green issues. Insuring green projects raises issues that have not been seen in regular insurance policies. [Some of these issues](#) can be seen in meeting particular benchmarks for effective energy and water consumption, which is hard to quantify, and so hard to be [included in the policy](#). Moreover, the effect of a faulty green construction is also hard to be measured, so many insurers will less likely to take responsibility for an unknown amount of risk.

[Insurance policies](#) are designed to protect against defects found in construction projects; nevertheless, these policies are not designed to protect against the losses due to inefficiencies. Currently, a defect in sustainable construction is treated as in any other construction project, under [the general commercial liability policies](#). The more green construction projects we have, the more variations in insurance policies

will be offered. In other words, with time, more sustainable insurance products will be available to respond to the unique issues in green projects.

What you need to be aware of

Paying attention to the strategies of risk management is critical in order to [minimize disputes and conflicts associated](#) with sustainable construction. It is essential to analyze green construction projects in order to identify all the unique legal issues to such buildings, including the design and construction processes, as well as the operation and long-term maintenance of these projects.

Specialized attorneys understand the aspects of conventional construction claims; however, [few of them](#) are as prepared to approach and tackle issues related specifically to green construction. As the numbers of green projects continue to grow, lawyers are expected to become more comfortable in tackling green construction cases. And as the litigation demand for green construction grows, attorneys have to respond and start self-educating on the complexity found in sustainable construction.

The [lack of high-quality](#) testing for the new technologies and ideas associated with sustainable construction might be a major factor in the increasing numbers of novel claims and disputes in the industry. It is also crucial to set a solid platform that identifies the [fundamental areas of disputes](#), covering contract types and project delivery methods used in such projects with disputes, which will help in determining their impact on the project schedule and budget, and identifying the phases in which the disputes happened and what kind of procedures were adopted to resolve the issues.

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