

A&E Briefings

Structuring risk management solutions

Déjà green all over again

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Those who went through architecture school in the '60s and '70s may remember the hippie-dippy days of the environmental movement back then: underground houses, solar panels, geodesic domes. Architects didn't design buildings - it was "shelter" and "habitat." The energy crisis of the late 1970s made us think that the trend would last forever.

Then came the '80s. Compact cars were traded in for gas-guzzlers. Post-modern architecture harkened back to the International Style of the 1940s and '50s, probably the most "anti-green" period of architectural design. High-rises with flat roofs and sealed glass curtainwalls were plopped down anywhere in the world.

But in the late '90s a little trickle of environmental sensitivity began to flow. It started with calls to preserve the rainforests and warnings about global warming. The formation of the United States Green Building Council (USGBC) and the development of its Leadership in Energy and Environmental Design (LEED®) certification rating system began integrating environmental thought into building design and construction. Many

design professionals of a certain age didn't pay much attention, figuring it was just another passing fad.

Now, it looks as though the current environmental emphasis will "stick." The "greening" of America has gone mainstream enough to be on the cover of *Newsweek* magazine. What's different this time, and what are the implications for design professionals?

Four characteristics differentiate the current green building phenomenon: sustainability, certification, mainstreaming and politics.

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Sustainability

Before electricity or central heating and air conditioning, structures were designed to take advantage of daylight, prevailing winds and natural insulation. The green building movement takes these issues into account and goes beyond them to the concept of sustainability.

The best-known definition of sustainability comes from the Brundtland Report (named for chairperson Gro Harlem Brundtland) of the World Commission on Environment and Development: "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs." According to the U.S. General Services Administration (GSA), sustainable design principles include the ability to:

- Optimize site potential
- Minimize non-renewable energy consumption
- Use environmentally preferable products
- Protect and conserve water
- Enhance indoor environmental quality
- Optimize operational and maintenance practices

Let's look at how these sustainability principles affect the practices of design professionals and the potential liabilities involved.

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1. The first principle encourages renovation or adaptive reuse rather than new construction, as well as using brownfields and infill sites rather than green fields, thereby taking advantage of existing transportation and infrastructure efficiencies. Obviously, there is greater potential liability for unknown/differing conditions to occur in a remodeling project or on a brownfield site.

2. The liability associated with minimizing the energy consumption of electrical and mechanical systems of a building occurs in two ways: the use of new technologies and quantifying energy savings. However, using cutting-edge technologies and newly developed products isn't always the most prudent course of action. In addition, performance specifications, such as annual energy use per gross square foot, are usually used to set the goal for the energy efficiency of a building. The issue for design professionals is that the energy usage or savings projections are computer-generated. Utility bills don't necessarily align with what the computer model showed. That may result in a claim by the owner.

3. Specifying green components takes into account how and where those products and materials are produced and manufactured. The design profession has to rely on suppliers and manufacturers for that information. Unless the products meet some kind of objective standard such as U.S. Energy Star®, that information may not be accurate.

4. Green isn't the only color to consider.

There's gray, as in gray water, which is the wastewater from laundries, sinks and baths that can be recycled. There's also black, as in black water from toilets that cannot be recycled (at least not on-site) but can be minimized. Additionally, rainwater harvesting is becoming more popular. The same caveats apply to water as to electricity and heat: be wary of new technologies and performance specifications.

5. By now everyone should be aware of volatile organic compounds (VOCs), sick building syndrome and mold as issues in indoor air quality (IAQ) and their associated liabilities. The importance of specifying tried and true IAQ-friendly products cannot be overemphasized.

6. Optimizing operational and maintenance practices is the trickiest principle for design professionals because of the lack of control. If the building doesn't meet performance specifications during occupancy, the owner may turn to the design professional for relief, rather than the maintenance crew. A thorough commissioning process before turnover can reduce liability by setting the standard for ongoing operations within a building.

Certification

Who's to say what makes a building "green"? The USGBC. While other organizations have attempted to develop rating systems and standards, the USGBC's LEED® system is probably the most widely accepted and recognized independent and objective standard.

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The LEED® rating system was developed to minimize greenwashing, the use of misleading environmental claims and advertising. Based on points, with sixty-nine points being the maximum, LEED® provides four levels of certification — Certified, Silver, Gold and Platinum — for new construction, existing buildings, and commercial interiors. In development are standards for core & shell, homes, multiple buildings, site only and neighborhoods.

Mainstreaming

Major owners and developers (and lenders) are embracing green building. Much of the success of the current green movement is because you can't tell that a building is green from the way it looks. Because sustainable design has been mainstreamed into large-scale commercial construction, however, the sheer size and scale of green projects multiplies the magnitude of liability for design professionals.

Politics

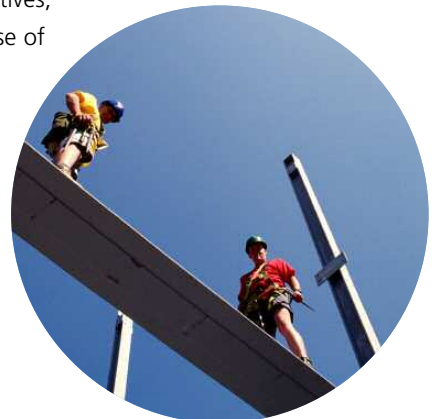
Probably the most compelling force within the green building initiative this time around is the government, especially at the municipal and state levels. For example, in June of 2006, the U.S. Conference of Mayors adopted the "2030 Challenge" performance targets to increase the fossil-fuel reduction standard for all new buildings to carbon neutral by 2030. New York City Local Law 86 went into full effect on January 1, 2007, requiring new municipal

buildings to achieve exacting energy cost reductions and meet standards of sustainability based on the LEED® system. Chicago developed its own Sustainable Design Manual for the realignment of runways at O'Hare International Airport. Updated summaries of government LEED initiatives can be found on the USGBC website at <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=1496>.

At the national level, various federal agencies, including the previously mentioned GSA, are taking the lead. The Federal Green Construction Guide for Specifiers was released in April of 2006 (<http://fedgreenspecs.wbdg.org>). This was a joint effort by the Environmental Protection Agency, Federal Environmental Executive and the Whole Building Design Guide. Later in the year, the Department of Energy and Public Technology, Inc. issued the Sustainable Building Technical Manual: Green Building Design, Construction, and Operations (<http://freshstart.ncat.org/articles/ptipub.htm>).

Another way that governments are supporting sustainability is through economic incentives, tax breaks and utility rebates. A Database of State Incentives for Renewables & Efficiency (DSIRE) can be found through the website of the Solar Center of North Carolina State University at http://www.ncsc.ncsu.edu/information_resources/renewable_energy_incentives.cfm.

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Get green and get involved

As the green building movement progresses, professional practice standards are changing as well. Design professionals need to be acutely aware of evolving standard practices and government initiatives. What may start as voluntary guidelines may later become statutory mandates. Get involved in knowing what's going on with green building and sustainability in your geographic area of practice. Green is a very good color.



Are you a cobbler?

Are you a cobbler whose children go barefoot?
Do you take care of everyone except yourself?

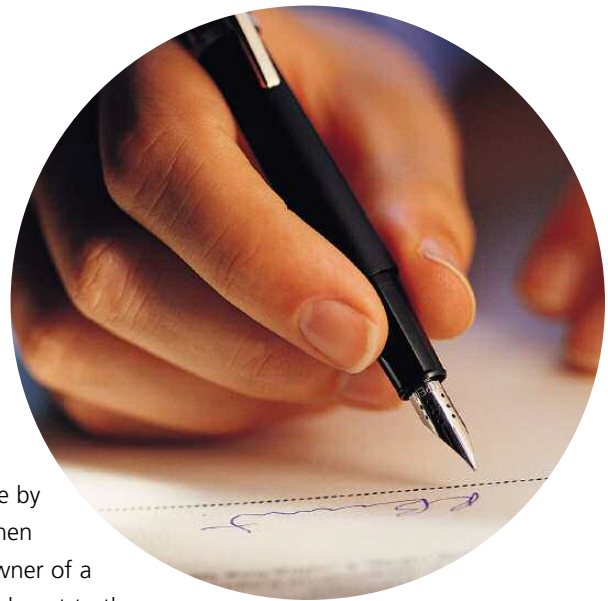
Here is a common scenario. As an architect, you are called upon to review and approve change orders submitted by the contractor. If you use The American Institute of Architects (AIA) standard contract documents, that means filling out the G701™-2000, Change Order. Day after day, you approve increases in the contract sum and extensions in the contract time for the contractor. Change orders can be very profitable for the contractor.

But what about your own contract changes? In the course of a typical project, your professional services agreement undergoes changes. You may be asked by the owner to provide additional design services for which you are entitled to receive additional compensation, additional reimbursable expenses and an extension of time. How do you handle that? Unfortunately, too often, architects and other design professionals do extra work on a verbal agreement.

G, these can help

G605, G606, and G607. What does this mean? These numbers refer to AIA forms:

- G605™-2000, Notification of Amendment to the Professional Services Agreement
- G606™-2000, Amendment to the Professional Services Agreement
- G607™-2000, Amendment to the Consultant Services Agreement



The G605™ is intended for use by the architect when notifying the owner of a proposed amendment to the professional services agreement. Prompt written notice to the architect from the owner is required to discontinue the described service.

The G606™ is intended to be used by the architect when amending the professional services agreement. The owner's signature is required in a manner consistent with the original agreement.

The G607™ is appropriate for use by two parties who have an agreement for professional services. Usually, the form is submitted by a consulting engineer to the architect for acceptance.

If changes in services are not handled properly, payment delay or non-payment may occur. You wouldn't start a project without a written agreement. You shouldn't provide additional or changed services without a written agreement either.

It doesn't matter whether you use the AIA forms described, or other such forms. It does matter that you document, in writing, additions and changes to your professional services agreement. Protect yourself in the event of a dispute. It's just good business.

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