



Building by the Law Series: The Legal Risks of Green Building

or

“I thought I just needed to put in more insulation!”

or

“LEEDigation”



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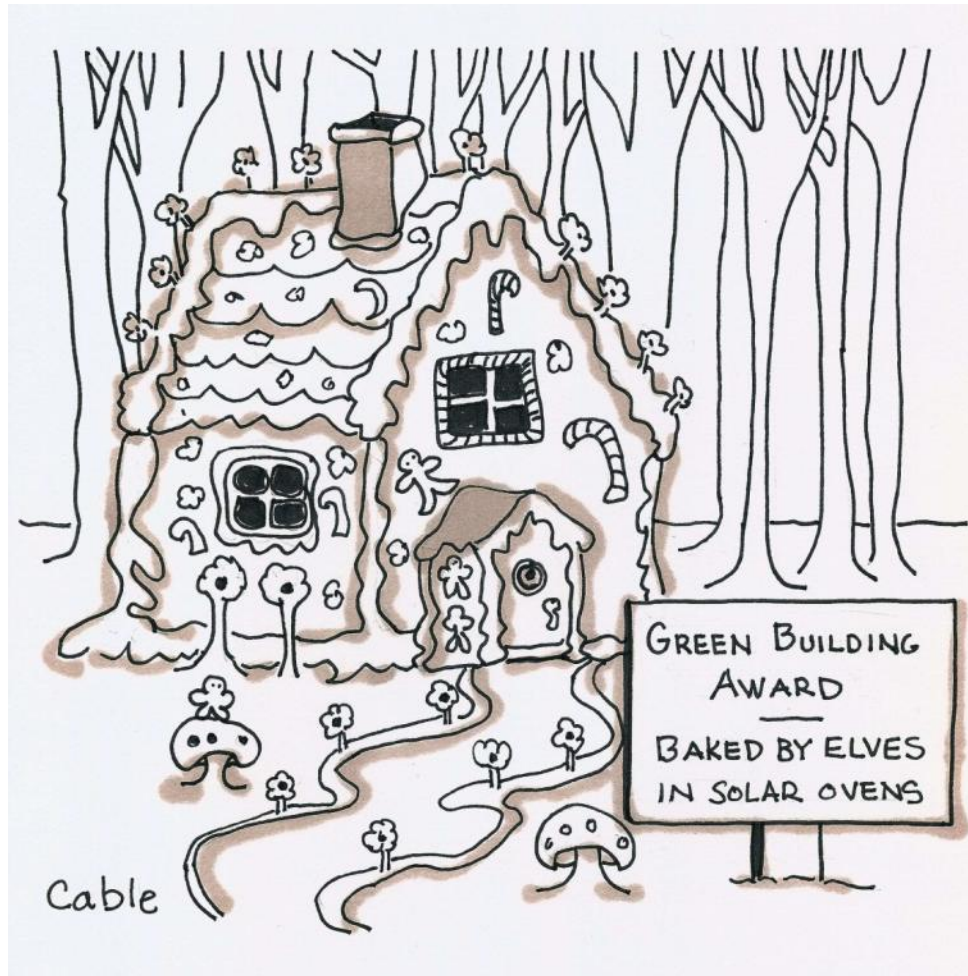


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Green Building nowadays:

Tighter building envelopes

Better insulation

Energy efficient appliances

walkable neighborhoods

open space

pollution controls – storm water

land use planning

◀ *Shaw Development vs. Southern Builders:*

The first green building litigation?



The Captain's Galley Condominiums



The *Shaw* Case

- ◀ Condominium project in Maryland with green design features.
- ◀ Project was to receive LEED Silver rating.
- ◀ Project accepted into program to receive green building tax credit. Without rating, no tax credits.
- ◀ Contractor sued on mechanic's lien; developer countersued claiming GC was responsible for loss of \$635,000 in tax credits.
- ◀ 1997 AIA A101 contract. Did that form contract specify who was responsible for specific green building components?



Some points

- ◀ “Green Building” is not a new *thing*. Just a new *name*.
- ◀ Definition of “Green Building?”
- ◀ Buildings account for 30% of all energy use in the U.S. ... 60% of all electricity
- ◀ 16 states have passed initiatives to promote green building.



◀ Significant legal risks in green building – deal with them

◀ Today's subjects

- ◀ Marketing
- ◀ Understanding & Setting the Client's Desires
- ◀ The GC/Owner Contract
- ◀ The SUBcontract
- ◀ Regulations
- ◀ Delivery and After
- ◀ So much more....



◀ Marketing Your Company

◀ Greenwashing – **DON'T DO IT** ... Be honest

◀ “Puffery” or “Fraud”?

◀ “We build green!”

◀ “Certified green builders!” **Are you really?**

◀ LEED/ Living Building Challenge/ Green Globes/ Build it Green/ NAHB

◀ Consumer Protection Statutes

◀ Treble Damages/Criminal Sanctions

◀ Be conservative in your claims

◀ “Most Knowledgeable....” “Best” **NO!**

◀ “We work hard to stay on the leading edge....”

◀ “We strive to be the best....”



◀ Investigate the Client's Desires

- ◀ Understand what the client wants
 - ◀ Level of “Green”
 - ◀ *Certified* “Green,” or just generally “Green?”
- ◀ What can the client afford?
 - ◀ “Green” building can be expensive!
- ◀ Are there unique issues?
 - ◀ Tax credits? (the *Shaw* case....)
 - ◀ Health?



◀ Drafting the Contract (this is the biggy!)

- ◀ Don't overpromise!

 - ◀ “we guarantee”

 - ◀ “we warrant”

 - ◀ “You WILL receive a home that will obtain a tax credit”

- ◀ Where you DO promise, deliver it

- ◀ Certification Fees?

- ◀ Permit alternative products?

- ◀ Cost escalator

- ◀ Project Delays

- ◀ Cost for Changes/Additions/Redesign



◀ Subcontracts (yep, they matter)

- ◀ Get subcontractors who understand the standards as much as possible
- ◀ Written acknowledgement of standard to which building
- ◀ Written acknowledgement that will build to standard
- ◀ Written acknowledgment that responsible for determining how to build to standard

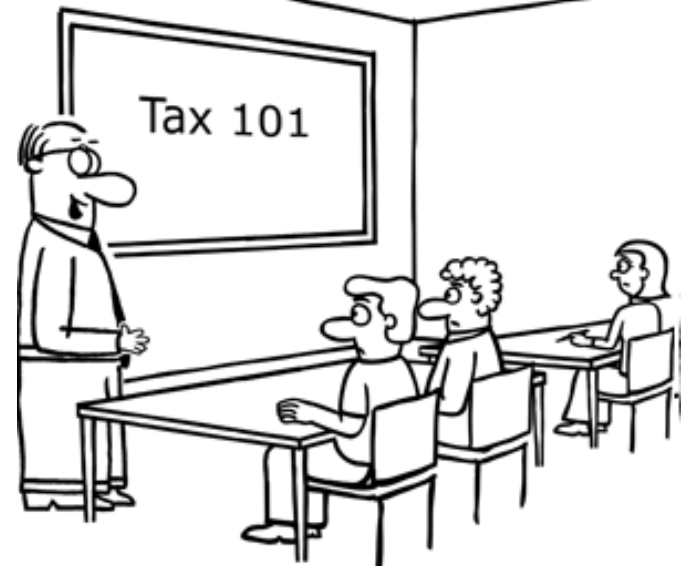


< Regulations

- < Know them (local/state)
- < Meet or Exceed them
- < Do NOT rely on the local building official

Stu's Views

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The Internal Revenue Code is absurdly complex or, as we lawyers say, a goldmine.



◀ Delivery & After

- ◀ Understand the Unique Warranty Issues
 - ◀ Technologically advanced
 - ◀ Expensive to maintain
 - ◀ Expensive warranty risks?

- ◀ Educate the client: cheaper energy costs ... but higher repair costs?



◀ So much more...

◀ Front end components

◀ Financing ... land use ... acquisition of property ...
people's expectations... contract ...

◀ Back end components

◀ Mesh expectations with reality ... failure to obtain
LEED ... misrepresentation of guarantees ...



We teased lawyers earlier...



“This home-improvement software is like working with a real contractor. It cost me three times more than I expected and half the time it doesn’t show up!”



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