

EFFECTIVE RISK MANAGEMENT IN GREEN BUILDING

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It's What's Up Front That Counts

- Strong *written* contract language is critical
- Plan Ahead
- Green Design and Contractual Expectations

Reduce the Likelihood of Problems to Avoid Liability



- Anticipate what could go wrong
- Certification Documents
- Contracts should assign responsibility

Terms of Your Contract



- Tailor contract specifically to your business and the project
- Understand your own contract
- Define your standards and certifications

Warranty vs. Statute of Limitations

- No standard warranty (unless it's a condo)
- SOL for Written Contracts = 6 Years
- SOL for Oral Contracts = 3 Years
- Include protection and time limitation clauses in the warranty terms of your contract

LEED Certification as Warranty or Guarantee

- Insist on contractual language that indicates signing is for the purpose of the rating system, but is not a warranty or guarantee
- Include definition of “certify” “affirm” or “declare” in contractual language
- If your Green Design/Construction is not using LEED construction standards, define the standards (*if any*) being used

Commencement of Warranty

- Specify when the warranty period starts and ends
- Establish definable event that triggers the running of the warranty

Commencement and Completion Dates

- Courts insistent on holding contractors to stated completion dates
- Identify any items or possible of delays in contract
- Have a general or anticipated end date that is not strictly enforceable or lay out conditions in contract

Liability



- Contact insurance provider for coverage on specific green design project
- Put pressure on insurance carriers to tailor coverage specific to the green design project

Change Orders



- Change orders should be in writing or contract should authorize oral change orders
- Clearly define scope of work
- Keep good time and material records
- Obligation to perform change order work
- Change order form

Payment Terms

- Payment terms should be defined in writing
- Specify in your contract what kind of down payment you want, how payments are applied
- Include specifics of the final payment and interest applied for late payments

Preexisting or Unforeseen Conditions



- Who is responsible for unforeseen or unobserved conditions of the property or structure?

Other Unforeseen Conditions:



- Job Site Safety
- Underground Conditions
- Responsibility for Workable Soil
- Cost of Special Analyses
- Hazardous Waste Removal

Other Important Issues for Risk Management:

- Incorporating your business for separation of business from personal assets
- Preparing and using written subcontract
- Preparing and using employer agreements
- Keeping Your Bid Open for a Limited Time
- Cost-Plus Contracts – Figuring the “Plus”

Other Important Issues for Risk Management (Part 2):

- Defining the Costs to be Charged to Customer
- Charging Labor at a Flat Rate, Not Actual Cost
- Cost Accounting Records
- How to make a claim against a contractor's registration bond
- Preliminary lien notices
- Preparing and using liens to get paid for work

Example Cases/Disputes

- Developer vs. Architect. Architect sued for breach of contract and warranty based on “guarantee” of LEED Gold certification.
- Owner/Contractor vs. Architect. Architect sued for designing with materials that caused delay on completion of the project.