



[Green Building- Interesting Third Party Issues](#)



As I was following some of the posts by @imadnaffa on Twitter, I came across a [post](#) by a consultant that guarantees LEED Certification. This got me thinking about the myriad issues relating to the third party certification aspect of adding such certification to construction contracts and the relationship of consultants to this process.

Much has already been said, particularly at the [Green Building Law Update](#), a great blog by my friend Chris Cheatham (@chrischeatham on Twitter), relating to the queasiness that overcomes a construction attorney at such guarantees. Many aspects of any "guarantee" need to be clarified. What about the energy reporting requirements that USGBC has imposed? Will this, and the seemingly unlimited time horizon of such reporting be included? Does any guarantee only kick in at the initial stage and the consultant then is no longer "on the hook?" What about continued commissioning and the vagaries of later behavior by facilities managers?

Also, the use of third parties as opposed to just [USGBC](#) or [GBCI](#) "officials" adds even another layer to this uneasy feeling I get when looking at this guarantee. This adds a new layer to the guarantee.

While I can see the marketing and business potential for such a guarantee, these are questions that I feel need to be answered. I am always wary of long time horizons in construction related matters. The longer the time horizon the more murky the liability issues become and the harder it is for a contractor or consultant to control its destiny. I am interested to see how this plays out in the future.

Please share your thoughts on this debate with a comment below.

The energy reporting issues have been discussed at length here at [Musings](#) and [elsewhere](#), I recommend that you check out that discussion for further thoughts on this issue.

Update: My friend @stephendp (A/K/A Stephen Del Percio of the Green Real Estate Law Journal) has weighed in on this debate [here](#).

Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.