

## *New LEED Reporting Requirements Underscore Importance of an Effective Green Lease*

*by Ronald B. Grais*

LEED Version 2009, effective July 1, includes new provisions that are important to owners and occupants of LEED Certified Buildings. The U.S. Green Building Council has noted a “performance gap” between projected energy usage and results of actual operations once LEED Certified Buildings are put into service. Accordingly, LEED 2009 includes a Minimum Program Requirement (“MPR”) of a commitment to share actual energy and water usage data with the USGBC for a period of at least five years.

The data sharing requirement applies to both general building areas and tenant spaces that are separately metered. **Failure to report energy and water usage data can result in revocation of LEED Certification.** The specter of decertification raises a host of questions under tenant leases, tax abatement agreements and loan covenants that require a building to maintain its LEED Certification.

The reporting requirement and other MPRs will apply to projects certified under LEED 2009 and do not

apply to projects registered under earlier versions of LEED, whether completed or still under construction. However, when those projects pursue certification as existing buildings, two years after the building is placed into service, the energy data sharing obligation will apply.

In order to comply with this MPR, a LEED Certified Building owner must ensure that tenants understand the energy-saving measures installed in the building and the requirement that usage data be shared. Owners have the right to demand this information from their tenants and enforce the obligation to share it. Traditional commercial leases do not contain such provisions and are not suited to dealing with the unique challenges inherent in green buildings.

The best way for LEED Certified Building owners to protect against the threat of loss of LEED Certification and all that it entails is to have an effective Green Lease in place with all of their tenants.

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