

## CONSTRUCTION LAW MUSINGS- RICHMOND, VA

THOUGHTS ON THE CONSTRUCTION/LEGAL LANDSCAPE FROM CHRISTOPHER G. HILL,  
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LAW

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### Musings On the LEED "De-Certification" Firestorm



Much [debate](#) has occurred relating to the USGBC determination to use potential de-certification of buildings as an enforcement mechanism to assure energy reporting guidelines are met. As ENR [reported](#) last week, this new requirement has caused much wailing and gnashing of teeth.

My question is this: Why the fuss? When you get right down to it, [LEED](#) is just a private rating system originally designed to give a snapshot of "green"-ness of a building when built that is now seeking to provide a rating for energy performance over a longer time frame. The USGBC did a great job of getting out first and having the debate focus on LEED. Please, don't take this wrong, I went through the [LEED AP](#) process, learned a lot and am firmly on the sustainable building side of the debate (if there even is one). However, LEED is just *one* of several green building rating systems that exist ([Green Globes](#) being the likely next most known system).

With a tip of the respectful cap to my friend [Chris Cheatham](#) (from whom I expect a **seriously** good comment) at the [Green Building Law Update](#), what makes the debate regarding the liability and enforceability both interesting and necessary is *not* LEED itself. What makes the debate necessary is the public's *use* of LEED as the standard for building codes, tax incentives, zoning rules, and private contractually created energy performance benchmarks. Frankly, one could substitute any rating system into this debate and the debate would just change from, for instance, USGBC to [GBI](#), and the arguments would be essentially the same. We would all be discussing how the GBI changed the rules and what contractors, owners, insurance companies, governments, etc. would be doing about it. As [Matt Devries](#) [points out](#), the *types* of claims (be they tort, contractual, or otherwise) will not change in this new "Green" world, but the expectations and the content of those claims very well may.

Presently, the content, and thus the focus, is on LEED. However, the USGBC did not create the firestorm, just the presently "hot" system for builders, owners, and governments. Good for the USGBC for having brought the debate forward, but the USGBC does not make the final rules; government regulations and contracts do. Without the incorporation of LEED into these types of rules, LEED would just be a label.

UPDATE: Please check out the great [post](#) by [Matt Devries](#) that sums up the latest on this nicely.

*If you have an issue or agreement with these Musings, please comment below. Of course, if you find this interesting, I encourage you to [subscribe](#) to keep up with the latest.*

ABOUT ME

I am a lawyer at the Richmond, VA firm, [DuretteBradshaw, PLC](#), member of Virginia's Legal Elite in Construction Law and a LEED AP. I specialize in mechanic's liens, contract review and consulting, occupational safety issues (VOSH and OSHA), and risk management for construction professionals. Please join the conversation!

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