

What Happens When Green Becomes Code: Do Buildings Get Better or Are Lawsuits Inevitable?

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The inevitable is about to happen and most people don't even know it is coming -- green buildings are going to become, by codification, the law of the land. For some firms, this will just mean business as usual. For other firms, this change will be cataclysmic.

ASHRAE produces standards that are adopted by most model building codes and the ASHRAE Draft Standard 189.1P is the new "Standard for the Design of High Performance Green Buildings Except Low-Rise Residential Buildings."

This new ASHRAE Standard (currently in its final draft) is written in code language and will have the impact of mandating that all new buildings will be green buildings, thus eliminating the option of constructing anything less robust. Even if this standard is not adopted by all model codes, it will become the de facto standard of care. On the surface this sounds like a very good thing -- mandating better performing, more energy efficient buildings, and it certainly has many redeeming aspects.

Here's the downside:

- **Lack of Experience Will Increase Design and Construction Deficiencies** - Many of the optional aspects of the current USGBC LEED® guidelines will now be mandatory for designers and contractors. This means that, even if your designer or contractor doesn't fully understand the key technical issues (e.g., envelope air barriers), they will still be required to use them. This practice of forcing designers and contractors to implement building features that they don't fully understand creates a dilemma in the industry: either represent yourself as technically savvy or face certain extinction. Given these as choices, failure becomes more inevitable as firms design and construct buildings with components that they do not understand in an effort to keep the work coming in.
- **Standard of Care Will Be Elevated** - These new code requirements will automatically raise the required standard of care for the design and construction industry. This will increase the risk profile of their projects and may (at least initially) trigger some exclusion clauses in their current insurance policies. What are now considered "best practices" will soon be considered the minimum standard of care.
- **Regional Issues Not Addressed** - The new standard mandates national green building requirements throughout the country with very little regard of the unique regions of the country where certain concepts may not be appropriate. This is almost always a problem when national standards are uniformly imposed on climates with unique requirements (e.g., hot and humid, very cold, or very rainy climates).

The inevitable result is that everyone will quickly morph into a green practitioner and the true marketplace differentiators (those with experience and unique technical expertise) will become difficult to discern. While codes can dictate that the industry follows certain standards, it cannot mandate that they get correctly implemented -- with an increase in design and construction deficiencies and lawsuits being the inevitable result.

Recognizing that this new standard (due to be issued in final form in 2010) could be a game-changer in the building marketplace, what's the path forward?

- Review a copy of the current draft version of ASHRAE 189.1P and begin to understand the impact of the new requirements on your firm's business, insurance, risk management, and technical expertise. (Note: This is available on line from www.ASHRAE.org).
- Identify what requisite skills and knowledge your firm will need once this new standard is implemented.
- As this draft standard is finalized, expect more updates from Liberty Building Forensics Group with our analysis on its impact.

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