

# The Law Office of Patricia I. Forman

3500 W. Olive Avenue, Suite 300

Burbank, California 91506

p: (818) 688-5933

f: (818) 88-5900

<http://www.pformanlaw.com>

## Green Doesn't Always Mean Profitable

SECTION 202 of the California Code of Regulations Title 24, Part 11, known as the "[California Green Building Standards Code](#)," defines "green building" as "a holistic approach to design, construction, and demolition that minimizes the building's impact on the environment, the occupants and the community." This Green Building Code sets forth levels of compliance, known as Cal Green Tiers 1 and 2, establishing a rating system for building construction compliant.

At the same time, the [U.S. Green Building Council](#) has developed a set of standards for certification of buildings as "Leadership in Energy & Environmental Design" (LEED) buildings, and is offering LEED certification to contractors. The LEED Professional Credentials and Exams are now administered by the [Green Building Certification Institute](#). Clearly, entirely new governmental entities, private entities, and certification structures are starting to be put into place in a marketplace that has already been adversely impacted by the down economy, and in an industry that has had serious difficulty regulating contractors and their employees, much less gauge a contractor's ability to build "green."

If a contractor bids and secures a project where the developer is granting entitlements based upon that contractor's contractual promise to obtain LEED Certifications, and a contractor fails to do so, the ability for residential properties to be sold and commercial properties to be leased can be negatively impacted leading to extensive liability exposure to the contractor that fails to perform. This is an issue that has not really even been broached by the underwriters in the insurance industry, so their reaction to such a claim could be unpredictable. Depending on the policy, underwriters may or may not consider it a covered claim, leaving the contractor open to unprecedented exposure. As a contractor, property owner, or developer it is important to not only have a general risk management plan for your company, but for each project especially if projects include new codes, regulations, and certifications.