

# Chicago Daily Law Bulletin®

Volume 156, No. 85

Friday, April 30, 2010

## The 800-pound gorilla in the green building movement

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Since the proverbial 800-pound gorilla gets things done the way it wants them done, the presence of a gorilla may explain why the movement to green commercial real estate has developed momentum. Every day we read stories about local building owners' green initiatives. These initiatives range from installing a green roof, putting up a wind turbine or retrofitting building systems. When a new office building project is announced, we assume that it will be green. A press release announcing plans to retrofit an existing office building to make it green is not the BIG story it once was.

This expectation shared by landlords, tenants and their respective representatives that commercial office buildings should be green is taking place at a time when there is still no commonly accepted definition of what we mean when we say that something — other than the grass — is green. Achieving a LEED certification (developed by the U. S. Green Building Council – USGBC) is one way to label a building as green and it is a recognizable certification. But the sustainability or greenness of a building can be measured by other rating systems such as Green Globes (created by the Canadian Standards Association) and Energy Star (established by the U.S. Environmental Protection Agency and the Department of Energy).

No matter which rating system is used, each provides a basis for determining how energy efficient a newly constructed or newly retrofitted building is. An energy efficient building uses less energy and using less energy not only saves money but is also perceived as good for the environment. In this article we are defining the term “green” to mean that a building has been designed or retrofitted to use less energy.

At the beginning of the green move-

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ment, building owners were skeptical of what they perceived as another fad that would cost them money and was not likely to make their building more marketable. While energy cost savings would be achieved by going green, the benefits of the landlord's expenditures would be reaped by the tenants since when the energy cost component of building operating expenses paid by tenants was reduced. Thus one would expect that the severe downturn in the economy, which has resulted in rising vacancies and falling rents, would have ended or put the green movement on hold. But this is not what has happened.

The 2009 Green Building Survey by the National Real Estate Investor in partnership with USGBC shows that buildings are continuing to go green. Data collected in August-September 2009 showed that in the 12-month period ending in August 2009, 1,784 buildings received a LEED certification — an increase of 47 percent over the prior year. These buildings contain 273 million square feet of new construction and retrofits of existing buildings — up from 133 million square feet in the prior year.

If building owners are continuing to undertake building retrofits and are spending money to reduce energy costs that benefit their tenants and not themselves, the presence of an 800-pound gorilla renting space in commercial office buildings could explain this. But what is this 800-pound gorilla?

Is it large corporate tenants with commitments to sustainability? Or is it a desire of these large tenants to meet the expectations of their younger employees that their employers will support the green movement? Or is it building owners themselves looking for a way to distinguish their building from other buildings in their market by providing tenants with reduced energy costs?

Actually the 800-pound gorilla is none other than federal, state and local governments with the federal government driving the biggest green office building bus. This should not be all that surprising because all levels of government need real estate to provide the offices and other spaces for their employees. The federal government has one of the world's largest real estate portfolios comprised of over 500,000 sites and 3.5

billion square feet of space.

As the occupant of millions of square feet of office space the federal government is the biggest of the 800-pound gorillas which has numerous requirements set forth in federal laws and executive orders that must be met if building owners and developers want to lease or develop space for the federal government. These requirements include green requirements that building owners must meet if their building is to be occupied by the federal government. With vacancy rates up, building owners want to make their buildings attractive to the largest pool of credit-worthy potential tenants.

In her paper “It's Not Easy Being Green: Green Leasing for Owners and Tenants of Commercial Property” presented at the fall meeting of the American College of Real Estate Lawyers, Theresa B. Shea described some of the federal government's green requirements. As expected these requirements include: reductions in energy use (and coincidentally energy costs), recycling and sustainable design. Shea describes the federal focus on reducing energy use as beginning with the National Energy Conservation Policy Act of 1978, which listed goals for reducing energy use. The government's focus on green began in the 1990s with a Department of Energy funded study of green buildings and sustainable practices.

Shea lists two federal acts — the Energy Policy Act of 2005 (EPACT) and the Energy Independence and Security Act of 2007 (EISA) and Executive Order 13423 as currently being the primary sources for federal requirements. EPACT, the first major energy legislation passed since the early 1990s, set forth comprehensive sustainable design requirements for federal facilities, required federal agencies to reduce energy consumption and instituted guidelines to measure and track performance. EISA updated those goals. It is these green requirements that building owners seeking to lease space to the federal government must meet. In her conclusion she states “the requirements propagated by executive order and federal legislation over the last two decades lead the curve of private and commercial standards.” This is the hallmark of an 800-pound gorilla.