

# AIA LEGAL BRIEF – JANUARY 2008

## AIA Pushes Members to be “Legally and Ethically” Green

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Are you ready for some football? How about a “green” one? And we’re not just talking about the color of the turf . . . It seems you cannot open a magazine, turn on the television or radio, surf the Internet or read a newspaper without being bombarded by references to "green design", "sustainable architecture" or one of the countless environmental initiatives taking place at any one time. Take for example the National Football League's efforts to "*Green the Super Bowl*." Not only did the NFL create the position of "Director of NFL Environmental Programs," but it will attempt to be environmentally responsible this year by offsetting greenhouse gas emissions created during the Big Game. The NFL's plans include buying certificates to offset the amount of carbon generated through electricity used at the Super Bowl combined with the planting of hundreds of native tree seedlings. Together, the event is predicted not only to be carbon neutral, but carbon negative.

To call sustainable design a "movement" or a "trend" would be a gross understatement. There is no doubt, "Green" is here to stay. At the lead of the Green Wave is the American Institute of Architects, as it should be. The AIA Board has embraced sustainable design in a big way, from Board policies, to the new 2007 AIA contract forms and now, to the AIA Code of Ethics. Regardless of your knowledge of sustainable design, the AIA is leading its members head-first into new territory. As of December 2007, as architects it is now your duty to learn about sustainable design and to advise your clients as part of your professional practice. This is no better evidenced than by the new revisions to the 2007 Code of Ethics and Professional Conduct and the recently released 2007 Edition of the AIA Contract Documents.

**Code of Ethics Changes.** In mid-December 2007, the AIA Board adopted a brand new section of the Code of Ethics and Professional Conduct. Canon VI deals solely with sustainable design and states as follows:

***Canon VI***  
***Obligations to the Environment***

*Members should promote sustainable design and development principles in their professional activities.*

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*E.S. 6.1 Sustainable Design: In performing design work, Members should be environmentally responsible and advocate sustainable design and site design.*

*E.S. 6.2 Sustainable Development: In performing professional services, Members should advocate the design, construction, and operation of sustainable buildings and communities.*

*E.S. 6.3 Sustainable Practices: Members should use sustainable practices within their firms and professional organization, and they should encourage their clients to do the same.*

The letters “E.S.” stand for “ethical standard” which means it is a “goal” for AIA members, as opposed to a “rule” for which an AIA member can be disciplined.

What do these newly enacted Ethical Standards mean in terms of your own professional practice? For those AIA members who have not read the Code of Ethics and Professional Conduct in some time, the Code is arranged in three tiers of statements: (1) Canons, (2) Ethical Standards, and (3) Rules of Conduct. The Code clarifies that: "Canons are broad principles of conduct"; "Ethical Standards (E.S.) are more specific goals toward which Members should aspire in professional performance and behavior"; "Rules of Conduct (Rule) are mandatory; violation of a Rule is grounds for disciplinary action by the Institute." Therefore, because these new sections of Canon VI are "Ethical Standards," AIA members are to "aspire" towards these goals of sustainable design, development and practice, however, a violation of any one of the new Ethical Standards will not be grounds for disciplinary action by the AIA. Regardless of whether disciplinary action may or may not be taken against an architect who violates the Ethical Standards, the commitment to sustainable design should not be taken lightly.

**New Contract Duties.** As most architects know, in November 2007, the AIA released the 2007 Update to its AIA Contract Documents. The 2007 Update consist of nearly 40 updated or new Contract Documents - including a brand new Owner-Architect Agreement entitled B101. In furtherance of the AIA's policy and commitment on sustainable design, the new Owner-Architect Agreement (B101) includes several requirements to promote sustainability and shape the landscape of environmentally responsible design and construction. **Warning: These sections are not mere “goals” – they are legal obligations for any architect who signs this new form!**

Under Sections 3.2.3 and 3.2.5.1 of the B101, during the Schematic Design phase, and as part of the architect's basic services, the architect is **required** to discuss with its client the feasibility of incorporating environmentally responsible design approaches into the project and consider them in completing the design. Here is the exact wording, highlighted for your convenience:

**§ 3.2.3** The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, *including the feasibility of incorporating environmentally responsible design approaches.* The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

Unlike a violation of the Ethical Standards which does not include disciplinary action, a violation of a requirement under the B101 Agreement is much more serious. Because the B101 is a legally binding contract between two parties, the failure to "*discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches*" could be deemed a breach of contract by the architect, with possible financial consequences.

A recent study revealed that 83 percent of designers believe they have a responsibility to offer green design solutions to their clients, but only 17 percent actually do so. The Green Wave has caught some architects unprepared to deal with this new area of practice. With the implementation of the AIA Ethical Standards and the requirements under the Owner-Architect Agreement, there is need for education on this important topic.

Sustainable design is no longer a lofty goal in which to aspire to. Sustainable design is now a legal and ethical mandate, a requirement. Ready or not, being "green" is here and is now part of required practice for AIA members and those who use AIA contracts. Are you ready to play ball?