



Greenwashing or Just Misunderstood? Increase in Dubious Claims of LEED Certification Seen in Marketplace

As Interest in LEED Buildings Intensifies, Claims of Certification Sometimes Overstate the Case

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With increasing frequency, buildings that are registered for the U.S. Green Building Council's LEED certification are being promoted using exaggerated, misleading or false claims, real estate lawyers and consultants say.

Many of the claims indicate that a property has earned LEED certification when it has not, or imply that certification is guaranteed at a time when the achievement is still uncertain. In other instances, registered or certified buildings are sometimes depicted as environmentally and financially superior to competitive properties without credible evidence.

According to Julia Wilhelm, a LEED Accredited Professional (LEED-AP) and associate director with the tenant advisory firm Studley in San Francisco, dubious claims are making it more difficult for LEED consumers, such as tenants, to reach valid decisions.

"Most companies want to make positive choices in where they choose to locate," she said, "but there's a lot of confusion about what they should be looking for or asking for."

Misleading statements about LEED, which appear in marketing materials, press statements and even securities filings, are a form of greenwashing -- questionable labeling or marketing claims about the environmental benefits of a product. And according to property professionals who have encountered it, the problem is becoming worse as the green movement has grown in popularity.

"There's a trend toward greenwashing across the board," said Valerie Walsh, principal of LEED Management Services, a Colorado-based LEED consulting firm. "It's the tactic-du-jour."

For buildings that are LEED-registered (but not yet certified), the most common issue is one of fake identity.

Real estate projects can register for certification or achieve pre-certification at any time during development, although they must complete construction before certification is awarded. Still, many projects that are still under construction are being advertised as LEED certified.

A development firm in Florida this week said that a 40-story tower it is building in Miami is the city's "first LEED certified silver office building," even though the property topped off just three days before and has not earned LEED certification.

In a September securities filing, **Applied Solar Inc.**, a solar energy corporation based in California, said it would install solar systems at a LEED-certified development near San Diego, but that project is not expected to deliver until late this year, according to CoStar information.

And in more extreme instances, owners are brandishing certification at properties that are nowhere near completion.

That was the case for the hotel chain Best Western in an April press release that ran under the headline, "First BW LEED Certified Hotel Breaks Ground," and for Rockville Bank of Connecticut, which issued a September press statement announcing that it recently "held a ground-breaking ceremony for Connecticut's first bank branch with 'Green' LEED Certification."

Last month, a development team known as University Place Associates unveiled a "LEED Platinum-Certified" office building in West Philadelphia. That property has not even broken ground.

Part of the problem is inattentiveness to the terms and definitions of the LEED certification process, said Kim Ford, a LEED-AP and principal with the tenant representation firm CresaPartners in Pittsburgh.

Often, the people marketing LEED-registered buildings "like to use the word 'LEED', but they're very naïve about the terminology," Ford said.

And many of those announcements aren't being vetted properly, said Brian Anderson, a real estate and corporate attorney with law firm Whyte Hirschboeck Dudek in Wisconsin. "When it's a statement of environmental good, there's a presumption that it might not need to be examined carefully," he said.

At other projects, owners and brokers are implying certification less overtly. Last week, Rilea Group, the developer of a high-rise tower in Miami that is pre-certified at the Gold level, said its building would become "Miami's first LEED Gold-certified office tower" following its completion in 2010.

And Tamiami Automotive Group, a Chrysler dealer in the southeast United States, made headlines in 2007 when it said it would construct a Miami dealership "that will be the first-ever 'LEED Gold certified' dealership in the country." But 18 months later, that property has been scrapped on account of the struggling automotive industry, according to sources with knowledge of the project.

The cancellation of a project is just one of many potential pitfalls for properties that imply certification in advance. In fact, the real challenges begin at ground break, said Paul D'Arelli, a shareholder at the law firm Greenberg Traurig in Fort Lauderdale.

Achieving certification is in the hands of multiple parties, such as architects, engineers, contractors and subcontractors, who "all have the ability to compromise the owner's certification objectives," D'Arelli wrote in a recent issue of the publication "Real Estate Issues."

And certifying a building is neither quick nor easy. Projects take an average of two years from the time they're registered to official certification, with an attrition rate of 25 percent to 30 percent, according to a study published last year by Greener World Media.

Finally, even if all of the project's objectives are met, USGBC can still deny certification or award a lower level of certification than the one that was sought.

For those reasons, Walsh said she resists promising certification on projects she manages -- a decision that has occasionally put her at odds with clients. "In no way, shape or form do I guarantee a building will certify," she said. "I'm not completely in control of the process."

"When you put everything together, we're cautioning owners and developers to be very careful," D'Arelli told CoStar. "It's a very risky proposition for an owner to say a project 'will be' certified."

Attorneys are also advising their clients to use discretion in the promotional use of studies and reports that have helped build a compelling business case for LEED buildings.

Many of those studies, including one sponsored by CoStar Group, have analyzed data on individual LEED-certified buildings and reported favorable trends in areas including energy consumption and resale value, or low cost premiums to achieve certification. But most of those findings reflect averages taken from across a wide range of properties that also show extreme variations. According to D'Arelli, inferring that one building will demonstrate comparable benefits to those obtained by averaging results from a range of buildings could create false expectations.

"What you're finding is a reliance on the law of averages. But there are always going to be over-performers and underperformers," he said.

For public companies, using data from studies to represent a building carries added risks. Beneficial claims about LEED buildings, such as tax breaks or a higher return on investment, could create liability if a shareholder purchases a security based on information that turns out to be misleading.

"Those are very substantive claims. They run to the very basis of reasonable investment decisions," Anderson said. "Now that we've seen a dramatic drop in stock prices, anyone making disclosures in this area has to be extremely cautious."
