



## Contracts, Climate & Compliance

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“New York City’s far-reaching climate laws will have a significant impact on developers, architects, engineers and the other members of the construction industry,” noted Michael De Chiara, Senior Partner at Zetlin & De Chiara. Mr. De Chiara and a panel of industry experts expanded on the changes at a recent workshop on **Contracts, Climate, & Compliance** sponsored by the Building Energy Exchange’s Architect Advisory Council (AAC) in cooperation with AIA New York and ASHRAE New York.

The panel provided a detailed look at the legal risk and responsibility of high performance design and construction, as well as how to improve compliance with NYC climate legislation, including its forthcoming predicted energy use code (Local Law 32 of 2018) and the groundbreaking building carbon emission limits of 2019’s Local Law 97.

The speakers at the event included:

- Richard Yancey, FAIA, LEED AP; Executive Director, Building Energy Exchange
- Rocco Giannetti, FAIA, LEED AP ID+C; Principal/Managing Director, Gensler
- Tomi Vest, General Counsel, NYC Mayor’s Office of Climate Resiliency

- Josephine Zurica, P.E., LEED AP, CPHC; Principal, Dagher Engineering, Chair, ACEC New York Metro ACEC Committee on Energy Codes
- Michael Izzo; Vice President, Construction, Hines
- Michael K. De Chiara, Esq.; Senior Partner, Zetlin & De Chiara LLP

Mr. Yancey, challenged architects to “radically adapt” because the new regulations require “fundamental changes to the practice of architecture.” To address these regulations and be part of the climate change solution, “... building performance must become a fundamental design element, no longer an afterthought,” he said.

New York City’s one million buildings contribute 70% of its carbon emissions. The climate legislation galvanized the members of the real estate, construction and design communities to reconsider work processes, roles and responsibilities as well as the contracts that will govern the relationships between the parties.

“The new regulations introduce lots of opportunities, but also risks. Protections will need to be built in for the architects and engineers and subsequent users. Architects’ contracts should include scope for proposing design options that, while more expensive, will meet and exceed the new codes. The professions must work together to lower liability,” said Mr. De Chiara. Changes to compensation models for architectural and engineering services may be needed to address the increased complexity of projects and to cover design professionals’ increased risk of claims. Several members of the panel saw opportunities to offer new services to owners including the required energy modeling required by the new laws.

With the potential liability so high, the panel concluded that moving to a more collaborative work model will produce better design, reduce carbon emissions and even enhance the services architects will offer clients.

With a focus on contracts, the consensus of the panel was that the AIA standard contracts were out of step with the practice of architecture, with one panelist noting that “design no longer happens in a silo, it is collaborative as well as iterative.” The current AIA contracts do not fully take into consideration increasingly integrated teams and concurrent work streams, as well as the ever-growing list of experts necessary to address individual complexities. The AIA contracts will also

require modification to appropriately allocate the risk of non-compliance with building performance standards.

The climate regulations in New York will necessitate long overdue changes to the AIA contracts. The current contract structure reinforces a silo (style) of working between all of the parties involved in construction and can put the members of construction team at odds with one another. Collaboration between the parties will make buildings healthier.

Key takeaways from the panel discussion:

1. How will roles and responsibilities change for architects?

- Design professionals must be involved in every step of the process.
- Extra time must be allotted for value engineering and performance evaluation over time.
- Front loading projects must become standard to allow proper assessments of long-term efficiency.
- Design professionals must embrace their role as a trusted advisor to less sophisticated owners.
- New expertise is required, such as knowing how to integrate technology into building performance.

2. Will there be more resources for owners in connection with the climate laws?

- There are financing opportunities for low-income housing, as well as plans in the works to create low-interest loans for retrofits.

1. In what respects do will working relationships have to change?

- Everything must be documented to owners. When architects present design solutions that will comply with the new energy standards, they should document their recommendations and any alterations that are requested.
- Insurance companies must also reconfigure liability.

3. How will collaboration help in achieving the best results?

- Collaboration helps all the parties involved and can save time and costs for projects where implemented appropriately by alerting the parties to clashes early on and bringing on early expertise that would otherwise be delayed until later in the design process
- Early involvement of systems engineers and subcontractors should be emphasized

4. What is energy modeling and how will it become part of the design and oversight process?

- Energy modeling will help all parties be able to better forecast energy efficiency.
- Early energy modeling of projects will be necessary to meet the demands of building performance standards

The panel can be viewed [here](#).

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