

LEGALLY SPEAKING: What Are Your Three Words for 2012?

By Matthew J. DeVries

Every year, social media strategist and entrepreneur Chris Brogan chooses three words that he uses as guidance for setting goals in the new year. For example, in 2011 Brogan focused all efforts on Reinvest, Package, and Flow, each of which he used as a lens to view his activities and his world. As we look to the construction industry in 2012, I would use the following three words to describe some legal trends we will see this year: Green. Collaboration. Protests.

Green. Given the topic of the past four *Legally Speaking* articles in 2011, it's no secret that green construction is going to remain at the forefront of discussions in 2012. There is a continued growth of major companies investing in sustainable building, and standards are becoming more mainstream. Legally speaking, this means two things. First, it will be important for you to know and understand your particular jurisdiction's codes and standards. As cities and states are adopting various versions of green codes and standards—whether the United States Green Building Council's LEED 2012 rating system that is scheduled to be released in 2012 or the International Green Construction Code released last Fall—you need to make sure your project is in compliance.

Second, the upcoming year is going to see numerous model contracts for green projects, including the American Institute of Architect's (AIA) green contract forms designed to help limit legal exposure by addressing the unique roles, risks and opportunities encountered on sustainable design and construction projects. Whether you are using an in-house contract document, the Green Building Addendum produced by ConsensusDOCS, or one of the new AIA green forms to be released in 2012, you should make sure that your contract properly addresses green risks on a sustainable project.

Collaboration. The word collaboration has different meanings to different people. To my seven young children, it means cleaning up the playroom as quickly as possible before dinner to ensure a bowl of ice cream at meal's end. For construction industry players, it means something similar—getting the finance, design, estimating, construction and operation teams to work together to ensure a high-quality, safe, timely and on-budget project. Legally speaking, collaboration in 2012 will involve:

- New forms of networking business development through tools such as Twitter, LinkedIn and Facebook, which will require companies to review their employment policies on computer and internet usages, as well as develop social media policies;

- New means of contracting, such as multi-party agreements that bring together all major design professionals and trade contractors/suppliers for full collaboration;
- New and increased uses of project management tools such as Building Information Modeling (BIM) and project delivery methods such as Integrated Project Delivery (IPD) and Lean Project Delivery (LPD). BIM can benefit owners by offering better design quality, better performing systems, schedule compression and cost-savings from early detected design changes and conflicts. Similarly, IPD and LPD are focused on the project as a whole and reward the collaborative efforts of the whole team, who may often share in those cost-savings; and

- New industry partnerships, such as the marketing partnership agreement announced in November 2011 between industry giants AIA and Associated Builders and Contractors (ABC). The partnership is designed to foster a greater understanding and exchange of ideas between architects and contractors in the construction industry. As part of the partnership, AIA will provide a number of benefits to ABC members, including a discount on the purchase of any retail-priced AIA Contract Document software license and access to AIA Contract Documents education programs.

Protests. Competition in the construction arena has resulted traditionally in an environment where you do whatever you can to make the deal happen, to keep the project going forward, and to minimize the risk of loss. The number of bid protests and challenges on public projects will continue to increase in 2012. With public projects being a large portion of the work being performed, you are going to see numerous bidders chasing a limited amount of projects, which increases the likelihood of fierce competition and protests.

What are your three words? As we start a new year, I encourage you to find three words that will guide your professional and personal endeavors. As a construction lawyer, I look forward to a green and collaborative year (... and I know there will be a few protests along the way ...). Happy New Year!

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