



## Avoiding Legal Risk In Going Green

Despite the economic downturn, studies show increased consumer purchasing of green products and services, greater interest in corporate environmental practices and increased spending on green marketing. A wave of green has washed over construction, design services, appliances and all manner of consumer products. "Going Green" is not a trend but it is the new paradigm. Businesses must move toward making their products, services, and public profiles greener just to stay competitive.

This green movement is leading to energy efficient structures, a more ecologically sensitive service sector and new products made from natural materials or that conserve resources. How a company makes the initial plunge into the sea of green or goes further out into the deep water can lead to increased presence in an environmentally conscious marketplace or it can create new risks, legal problems and liabilities. So it is important to first understand what it means to go green in your business and consider the risks to attempt to avoid legal issues later.

Certification and marketing restrictions are areas for study before launching a new business initiative. There is no one set of uniform standards for certification of structures, professionals or products as green. In the building industry, design and professional certifications are available from various national third party organizations such as Leadership in Energy and Environmental Design (LEED) and the American National Standards Institute (National Green Building Standards). Nationally recognized certifications such as Green Seal, Eco Logo, and Green Guard are available to identify products as protective of the environment.

Careful study of what certifications



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mean and what it takes to get them is needed as they differ widely in scope, focus and requirements. Review of the third party organizations, procedures and requirements for a proper fit is essential. Many certifications will require substantial monetary and resource investment, but provide reliable independent verifications that requirements are met. Choosing the right certification can provide a competitive advantage, as well as foster regulatory compliance.

Regulation of the promotion and marketing process began on the national level in 1992 with the FTC Guides for the Use of Environmental Marketing Claims. These "Green Guides" outline general principals applicable to all environmental marketing and give guidance on specific claims (e.g., biodegradable, energy efficiency). The Green Guides are now under review to consider new technologies and third party certifications. As green marketing continues to increase, FTC enforcement will likely step up and states will follow the federal lead.

Many legal questions are yet to be answered by the courts in the new paradigm. Does marketing a design as green create a warranty? What is the effect on loss of a certification for building products used in green buildings? How far will courts go in the consumer class action arena with "green-washing" allegations of misleading, inaccurate or unsubstantiated advertising or marketing? Understanding the choices and making good ones may help to keep your business out of the litigation that decides these issues. *So get informed before you get green.*



**Kevan F. Hirsch** is a principal in the firm's Business & Commercial Litigation and Construction Law Group. He represents a diverse array of clients in resolving their commercial claims and disputes with a large segment of his practice devoted to representation of general contractors, trade contractors, and industrial equipment manufacturers. You can reach Kevan at 610.941.2535 or by email to [khirsch@kaplaw.com](mailto:khirsch@kaplaw.com).

# Seminars

**Neil A. Stein** and **Amee S. Farrell**, of the Land Use, Zoning & Development group, will be presenting a program on *Incentive and Risk in Green Buildings* at the MidAtlantic Real Estate Journal's 2nd Annual Green Buildings Summit on June 2, 2010 in Trenton, New Jersey.

**Maury B. Reiter**, a principal in the Real Estate, Business & Finance group, presented a course on *Best Tax Strategies for the Real Estate Investor* for the Real Estate Institute of Temple University Center City on April 22 and May 4, 2010.

**William K. Stewart** a principal in the Real Estate, Business & Finance group, presented a course on *A Focus on Commercial Transactions During a Recession* for the Real Estate Institute of Temple University Center City on April 8 and May 6, 2010.

**Pamela M. Tobin**, a member of the Commercial Litigation group, presented a program on *Handling and Protecting Electronic Information* to the Women in Construction group of the Associated Builders and Contractors, Southeastern Chapter on April 16, 2010. Ms. Tobin presents this program frequently to business owners, discussing their obligations under the law to preserve and produce electronic information in litigation cases. If you would like to have Pam present a program to your organization you may contact her at 610.941.2543 (ptobin@kaplaw.com).

**Michael P. Coughlin**, a principal in the Commercial Litigation group, spoke on *Recent Claims Affecting the Title Insurance Industry* at the Chicago Title Agent Conference on April 14, 2010 at the Blue Bell Country Club, Blue Bell, PA.



## Attorney News

**Sandhya M. Feltes**, a principal in the Commercial Litigation group, prevailed in a case before the Third Circuit Court of Appeals which has expanded law in favor of lenders. In a decision rendered on April 2, 2010, it was determined that residential borrowers must first prove that they have the ability and willingness to repay the loan proceeds before a Court will consider rescinding the mortgage lien under the Truth in Lending Act (TILA). A borrower who cannot or will not repay the loan proceeds may be precluded from rescinding the mortgage lien.

**Neil A. Stein**, a principal in the Land Use, Zoning & Development group, was a judge at the *Ninth Annual Build a House ... Build a Dream! Contest for Kids*, on April 17, 2010, hosted by Delaware Valley Habitat for Humanity. More than 700 fifth grade students throughout the Delaware Valley competed by building the three-dimensional house of their dreams. The goal of the contest was to raise awareness of building simple, decent homes for sale to low-income families and to raise funds to continue building in this region.

## Congratulations!

**Adelaine F. Williams**, Chief Operating Officer of Kaplin Stewart, has been elected President of the Independence Chapter of the Association of Legal Administrators (ALA) for a one-year term. Ms. Williams has been in law firm administration for 20 years and oversees all firm administration at Kaplin Stewart, including HR, accounting and technology.

We are pleased to announce that **Super Lawyers**, which is a listing of outstanding attorneys who have attained a high degree of peer recognition and professional achievement, selected the following principals as *Pennsylvania Super Lawyers 2010*: **Andrew B. Cohn** (Construction Law), **Ronald B. Glazer** (Real Estate), **Marc B. Kaplin** (Land Use), **Robert A. Korn** (Construction Law) and **William J. Levant** (Commercial Litigation). Also named by **Super Lawyers** as *Pennsylvania Rising Stars 2010* are attorneys **Gregg I. Adelman** (Land Use), **Simi Kaplin Baer** (Real Estate Transactions), **Joshua C. Quinter** (Construction Law) and **Dirk M. Simpson** (Estate Administration & Planning).

**George W. Broseman**, a principal in the Land Use & Development group, was part of a team that was recognized on May 11, 2010 with a Lower Merion Township Historic Preservation Award for the expansion of the Bala House Montessori School located at the Church of St. Asaph in Bala Cynwyd, PA. Mr. Broseman was able to secure the necessary zoning, land development and Historical Commission approvals. This is the second year in a row that one of Mr. Broseman's projects received a Historic Preservation Award. Both projects involved complex approvals.

**Ronald B. Glazer**, a principal in the Land Use, Zoning & Development group, was named *Best Attorney of 2009* by the *MidAtlantic Real Estate Journal*. We are also very proud that Kaplin Stewart was named *Best Place to Work 2009* by the *MidAtlantic Real Estate Journal*.





# Attorney Spotlight

This month, Kaplin Stewart shines the spotlight on Rob Lewis, an associate in our Land Use and Zoning group. At a young age, Rob's mother implored that there were two things he should never become - an ice hockey goalie or a lawyer. Being raised in Feasterville, PA, not exactly a Mecca for world class hockey players, seemed to make the first a foregone conclusion. Being raised the son of a state senator and lawyer made the second a bit more daunting. Much to his mother's chagrin Rob developed a passion for ice hockey (goalie, of course) and pursued his dream to Boston University. At BU however, Rob quickly realized that a 17 year-old from Pennsylvania was a bit out matched on the ice by 20-somethings from Saskatchewan, Michigan, and Minnesota; oh and some kid named Drury from Trumbull, Connecticut. Nonetheless, enamored with Boston and the ability to play in a "recreational" league with former and soon-to-be NHLers, Rob completed his degree at BU in International Relations. Unwilling to hang up the skates and content to avoid the "real world" for few years, Rob made it two for two in ignoring his mother's career path admonishments by continuing on to Boston University's School of Law.

During the summer after his first year of law school, Rob interned in criminal court in Philadelphia. Although treated to valuable courtroom experience and the priceless teachings on professionalism by the Honorable Gene D. Cohen, the critical learning experience was that Rob and criminal law mixed like oil and water.



**Rob Lewis**

After matriculating from law school Rob accepted a prestigious clerkship with the Commonwealth Court of Pennsylvania. Here he got his first taste of land use and zoning law. Inexplicably, Rob's experience assisting President Judge Colins in authoring a published opinion on the impropriety of housing racing pigeons in a residential zoning district wasn't a divine revelation of his career path. Upon completing his clerkship, Rob spent the next three years honing his litigation skills at the law firm of Braverman Daniels Kaskey. The skills he learned and the quality of his mentors were second to none, but Rob realized that his talents and happiness lie elsewhere.

Based on a colleague's recommendation as to their legal acumen and energetic working environment, Rob accepted a position with the land use and zoning department of Kaplin Stewart in 2004. At Kaplin Stewart, Rob finally realized his passion for the law finding a practice that provides a unique and fulfilling opportunity to blend his personal life, where he outlets a burning desire for construction and working with his hands through carpentry and home improvement, and his professional skill as an advocate for his clients seeking approvals for the development of their properties.

Sadly, Rob's skates have long since been relegated to the basement having been traded in for golf spikes and climbing gear. Now, when he's not in the office, you can usually find Rob with his wife Leslie dangling from cliffs in West Virginia or boulders in California, or playing golf at Huntingdon Valley Country Club.

## Do You Know—

The Census 2000 Summary reports that the American workforce includes 18.6 million people with disabilities between the ages of 16 to 64. That number certainly will increase as the "Baby Boomer" population continues to age and the financial stresses of the American economy in the post-Madoff era forces aging adults to remain in the workforce. Of even greater significance is a major change in federal law that went virtually unnoticed in the mainstream media but which affects the legal responsibilities of millions of employers. Effective January 1, 2009, Congress amended the Americans with Disabilities Act (ADA), the federal law that requires employers to implement "reasonable accommodations" for disabled employees to enable those employees to work. The ADA amendments significantly expanded the number of employees who qualify as "disabled" by expanding the definition of disabled to include any individual with an impairment of any bodily system (i.e. circulatory system for individuals with high blood pressure) and prohibiting the consideration of "mitigating measures" such as medication in determining whether an individual is substantially limited in their life activities and thereby entitled to protection under the ADA. The aging workforce combined with the expansion of the ADA means that employers may be required to make accommodations in workplace rules far beyond what an employer ever may have realized.

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# Legal Perspectives

## Know The Rules of the Game

I was listening to a Phillies game on the radio recently when I heard an advertisement for a contractor selling its home improvement services. It struck me at the end of the commercial that there were at least two potential legal problems under the Pennsylvania Home Improvement Consumer Protection Law and that many in the construction business are still not aware of this new law or its reach.

To start, the law applies to far more than your local handy man.



Joshua C. Quinter

Here are the basics:

1. **It covers more than basic home repairs.** In addition to home repairs like patching dry wall or fixing a burst water pipe, it includes “construction, replacement, installation, and improvement” of things like pools, porches, garages, and solar energy systems if the work is done at or adjacent to a private residence.
2. **If you are covered, you must register.** If covered, the contractor must register with the Pennsylvania Attorney General’s office and obtain a license. It requires the submission of a form that calls for 8 different categories of information and a \$50 fee.
3. **Obligations for the registered contractor.** The contractor must display its registration number in a conspicuous place everywhere it advertises, including on the radio or television. “Home improvement contracts” for more than \$500 must also include the registration number and quite a few other specific and onerous items.
4. **Violators beware.** As a consumer protection law, the act has significant teeth in the form of civil and criminal penalties.

Make sure you do your homework to determine whether this new law applies to you. If it does, take the necessary steps to be in compliance in order to avoid major headaches.

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