

# FEDERAL STANDARD ABSTRACT

## TITLE NEWS

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### Title News

#### **New York City Green Buildings Package**

On December 28, 2009, Mayor Bloomberg signed into law four bills which impose substantial requirements on private buildings having square footage in excess of 50,000 sq.ft., regardless of whether they are residential or commercial. The four local laws together constitute a centerpiece of the PlaNYC initiative announced by Mayor Bloomberg in 2007. We present below highlights of the four bills. The reader should be aware that, the actual laws totaling about 70 pages, this is not a summary. 1-3 family residences and landmark buildings are exempted from most provisions. The laws empower City agencies to make rules to implement them.

##### *a. Benchmarking Energy and Water Use*

Starting May 1, 2011, this local law requires owners (including co-op and condo boards) to report water and energy consumption annually to the NYC Dept. of Finance. The DoF will publish the information and rate each building according to consumption per square foot. Consumption of energy and water by commercial tenants must be sub-metered and reported separately (which hints that overall performance by

companies having many locations throughout the City may also be rated).

##### *b. NYC Energy Conservation Code*

The current Energy Code provides that, as long as a renovation does not replace 50% or more of the building's energy system, there is no need to bring the system up to the current code. For example, if a building built in 1930 is renovated in 2011 there is no need to bring the entire electric system up to the current code if the renovation does not cover 50% of the 1930 wiring. The new code, effective July 1, 2010, removes this exemption. The effect is that most additions, alterations and repairs may require owners to bring the electric system up to the current code. Needless to say, this could involve opening walls and ceiling to replace and pass new wiring, replace fuse boxes, and opening more outlets, among other things.

##### *c. Energy Audits and Retro-Commissioning of Base Building System*

Starting 2013, owners will be required to file energy efficiency reports annually with the Dept. of Buildings. Every four years the owner will be required to hire an independent contractor to draft a report about how energy consumption can be optimized by calibrating thermostats, adjusting valves, cleaning, etc. This report will also be filed with

the DoB, and the DoB will perform its own energy audit. In addition, the law mandates specific replacements to be completed by July 1, 2010, such as installation of low-flow faucets and shower heads, individual heating controls (or individual sensors with master managing system), pipe insulation, and installation of efficient up-to-code common area and exterior lighting. New buildings will also be required to have cool roofs (i.e. reflective roofs that emit sun heat back to the sky).

*d. Lighting Upgrade and Installation of Sub-Meters*

This local law requires owners to update lighting systems by January 1, 2025, to meet the new NYC Energy Code. Upgrades include the installation of modification of lighting controls, dimmers, sensors, tandem wiring, exit signs, power requirements and exterior lighting. Upgrades made to comply with the code as effective on July 1, 2010 are exempt. A report made by a license electrician certifying compliance with upgrade requirements must be filed with the DoB. All electricity consumed by commercial tenants must be sub-metered by January 1, 2025 (note that provisions from the Energy Benchmarking bill mandate sub-metering by May 1, 2011). Commercial tenanted spaces smaller than 10,000 sq.ft. are exempt from this law.

*e. A Note on Financing Improvements*

Though the cost of compliance with the new local laws appears to be daunting, it should be remembered that it is the expectation that the improvements will pay for themselves overtime by cutting

energy costs to owners. In addition, the City has announced that it will pledge \$16 million towards loans to finance improvements required by the new local laws. It is also the expectation that as loans are repaid, new loans will be made, thus extending the reach of the \$16 million pledge.

*f. Further Reading*

Mayor Bloomberg's plan for New York City can be found at:  
[www.nyc.gov/planyc](http://www.nyc.gov/planyc)

The text of the four local laws discussed herein can be found at:  
[http://www.nyc.gov/html/planyc2030/html/plan/buildings\\_plan.shtml](http://www.nyc.gov/html/planyc2030/html/plan/buildings_plan.shtml)

**When does the insurer have duty to defend?**

Whether the insurer has duty to defend in a suit is usually depending on whether the title issue is within the scope of described property in the policy. Recent cases also re-affirmed this long-standing rule. In *Ankari v. Fidelity National Title Insurance of New York*, 867 N.Y.S.2d 15, 2008 WL2346135, Susan Ankari and Joan Waldman Ankari purchased a property from Nancy Porush and obtained title insurance from Fidelity National Title Insurance of New York ("Fidelity"). Mrs. Porush's husband was facing charges for money laundering and other federal offenses. Mr. Porush conveyed a property to his wife for no consideration, who then conveyed a different property to a separate couple (the Schwartzes), who used First American Title Insurance Company of New York ("First American") as their title insurer. The court set aside the

Schwartz conveyance and First American paid on its policy in a lawsuit brought by one of Mr. Porush's defrauded investors. It then sued Ankari to set aside the transaction with Mrs. Porush. Ankari brought suit against Fidelity when the case was dismissed by arguing that it had to defend the First American suit. The court agreed with Fidelity's argument that the suit brought by First American was outside the scope of its duty under its policy because it did not involve the property insured in the policy and therefore there was no title defect and no duty to defend. However, the only potential warning of the claim would be if the title examiner had located a *lis pendens* filed on another

property the predecessor owned in another county. The court expressly conceded that the insurer had no duty to search other properties. *Id.* at 2-3. In another case, *Francis v. D & W Saratoga, Inc.*, 856 N.Y.S. 2d 137 (App. Div. 2008), the New York appellate court held that the insurer had a duty to defend its insured in an action alleging that the insured had acquired title through a fraudulent deed. The court held that the duty to defend had been triggered because the policy did not include a specific exclusion for fraudulent conveyances. Interesting enough, the court never discussed the exception for defects "created, assumed or agreed to" in this case.

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