



## **WHAT ZERO NET ENERGY MEANS FOR HOME BUYERS**

### **SIMILAR TO THE PUBLIC'S GROWING INTEREST IN GREEN CONSTRUCTION, BUILDERS ARE INCREASINGLY HEARING FROM POTENTIAL BUYERS THAT ENERGY EFFICIENCY IS A KEY ITEM ON THEIR NEW-HOME WISH LIST, CCN'S JOHN MUSITANO TELLS GLOBEST.COM**

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specializes in advising his clients on transactional insurance and risk management issues for new developments and existing properties.

Musitano spoke at PCBC here last month on the Code & Policies Sessions' "**Selling Zero: The Risk, Reward, and Reality of Marketing ZNE**" panel. We spoke with him about why [zero-net-energy](#) design appeals to buyers, the Title 24 definition of new ZNE construction and what it means for home construction and the possible legal consequences if a home does not perform as designed.

**SAN DIEGO**—Similar to the public's growing interest in **green construction**, builders are increasingly hearing from potential buyers that energy efficiency is a key item on their new-home wish list, [Cox Castle Nicholson](#) partner **John Musitano** tells GlobeSt.com. Musitano brings more than 20

years of experience representing **commercial** and **residential real estate** companies in insurance coverage, real estate and construction litigation and

***GlobeSt.com: Why does zero net energy (ZNE) design appeal to buyers, and when is it a turnoff?***

**Musitano:** Similar to the public's growing interest in "green" construction, builders are increasingly hearing from potential buyers that energy efficiency is a key item on their new home wish list. Buyers are actively seeking homes where they can save substantially on energy costs and potentially be energy independent. For those buyers who wish to reduce their impact on the environment, zero-net-energy design is perceived as allowing this in a direct and personal way. In locales where energy bills typically run higher, buyers are even more focused on the benefits of a home that outperforms from an efficiency standpoint.

Conversely, potential negatives associated with zero net energy could include the effects of the builder's often higher costs of design and construction. Builders may look to pass along the costs in the form of a higher sale price or alternatively to reduce construction costs in other parts of the home. Affordability represents a major hurdle, and buyers may not be interested in higher upfront costs, especially if the details of expected energy performance do not match a buyer's expectations. Builders already experienced in this area of construction recognize the importance of educating potential buyers on both the promise and limits of ZNE design.

***GlobeSt.com: What is the Title 24 definition of new ZNE construction, and what does it mean for home construction?***

**Musitano:** The **California Title 24 Building Energy Efficiency Standards** are focused on improving energy efficiency in new and existing buildings. The **California Energy Commission** is responsible for updating energy-efficiency standards and is working toward standards to facilitate California's goal of zero net energy in all new-home construction. While the upcoming 2019 Title 24 code will not constitute a "full ZNE" code, it will move California construction further toward that goal, including more-stringent expected standards pertaining to the use and sizing of home solar systems.

In the building industry, the term ZNE generally is used to describe the combined use of energy-efficient elements and on-site energy generation to meet or exceed a structure's energy needs on an annual basis. In its ongoing discussions with stakeholder groups (e.g., builders, utilities, trade associations, architects and engineers) about changes to Title 24 standards, the CEC utilizes a proposed definition of ZNE that measures ZNE compliance by comparing the "value" of the amount of energy produced on site against the "value" of the energy consumed annually.

Even while the details of what constitutes ZNE and the related standards continue to develop, homebuilders in California can count on facing an increasing set of mandatory energy conservation standards over the next few years. This is in comparison to “green” building efforts, which began as an almost exclusively voluntary program under which builders could achieve various levels of certification. The energy-efficiency standards will often come with higher upfront design costs as builders analyze how best to incorporate ZNE design elements that are suitable to their climate zone, weigh decisions about efficiency performance versus cost and overcome design hurdles such as how to optimize rooftop sun exposure for their project.

***GlobeSt.com: What are the possible legal consequences if a home does not perform as designed?***

***Musitano:*** ZNE design and construction can carry with it increased liability risks and potential litigation. The liability exposure stems from the use of new products and construction methods, from the varied terminology used in the marketplace regarding energy-efficient homes and from higher consumer expectations. Those buyers interested in ZNE homes will have expectations about energy savings, home performance and indoor comfort. Those disappointed with their homes may assert a variety of claims, including based in tort and contract theories, in their efforts to recover damages or other relief.

By example, where buyers believe their home falls short of promises made by the builder, they may allege fraud claims such as misrepresentation or concealment. Buyers may also assert construction defect claims against the seller and contractors in the form of common law (e.g., negligence) or statutory (e.g., SB800) causes of action based on allegations of property damage or other defects associated with the new construction elements. In addition, where there were written representations regarding ZNE designations or specified energy-efficiency standards, a homeowner challenging compliance with the same may attempt to pursue damages under a breach-of-contract or breach-of-warranty theory.

***GlobeSt.com: What else should readers know about this topic?***

***Musitano:*** Homes built with energy-efficient components approaching or achieving ZNE are the future for California and, increasingly, a part of the now. On the immediate horizon are increasing numbers of mandatory building standards designed to achieve these goals, and advances in the related technology are making such performance more attainable. Moreover,

with such advances, the associated costs of construction will drop and further drive up the appeal to buyers.

Those new to the topic should understand that this can be a complex and evolving area, where varied definitions can be referenced to describe home performance. While there are active and important discussions regarding zero net energy happening on the state level, many cities, like Santa Monica, are developing their own mandates ahead of Title 24, and some builders are already offering reduced-energy and net-zero-energy home options.

Successful builders are working well in advance of their planned energy-efficient developments and the expected Title 24 changes to organize their risk-management strategies pertaining to both the **construction** and marketing of such homes. Tools such as peer review, quality assurance, carefully drafted disclosures and sales and customer-service staff training can be combined with protective provisions in project documents and a strong insurance program to reduce the risks that may be associated with this inevitable shift in home construction.