



It's a Matter of Copyright - Design Professionals Should always Beware

Rarely do copyright issues in the design community result from conscious discernment or deliberate acts. More likely, a client provides the design professional with a complete set of drawings to reference as a starting point for design. The design professional does not look for or notice a copyright mark anywhere on the drawings, and does not even consider the potential that the plans are copyrighted drawings which could set off a copyright confrontation. Or even if copyright is taken into consideration, the design professional may assume the client's ownership of the documents, or simply emphasize the value of accomplishing the project and impressing the new client over pursuit of the matter. The bottom line is that copyright

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Architectural drawings are without a doubt copyrighted material; no matter whether there is a copyright stamp or not. Whereas the origin of the plans may not be apparent, one detail is clear: If the work is not of your original design and you work off them, you may well be positioning yourself for a copyright infringement claim in federal court.

Take, for example, the client who provided the architect with a set of plans and exclaimed, "This is the home I want." The architect asked the owner if he had indeed bought and paid for the plans. The owners' answer was yes. Using the plans, the architect produced a virtually identical home – almost impossible to tell them apart except for few slight modifications – thereby thinking he was protecting himself from any possible legal ramifications. Not many years later, however, the developer who was the original owner of the drawings was



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visiting in the same neighborhood and was amazed to see his copyrighted home there looking back at him. The client had met with the developer earlier and obtained a set of the plans for the model home they were interested in, but he had never paid the developer for the drawings. They alternatively decided to hire an architect on their own and as a result, the developer sued both the homeowner and the architect for copyright infringement.

In another example, the owner of a beachfront lot hires an architect to finalize the drawings of a home originally designed by another architect. Before the client approached the second architect – or even the initial architect, the client had visited another beachfront community under construction by a design/build developer. After finding a residence that he liked, the client had initiated negotiations with the developer for one of the homes under construction, but the negotiations fell through and were never finalized.

Afterward, the client bought the property, and hired the original architect on the condition that he incorporate the model, including room sizes, as well as the exterior design of the home. The client then went in search of a second architect and gave him the drawings. He advised the architect that he was the owner of the drawings.

The developer became aware of the construction of the home and went to see for himself. Believing that the residence was considerably similar to the home he had previously shown the owner, the developer filed a lawsuit against the client and the second architect for copyright infringement. In this case, the architect prevailed and the case was summarily dismissed with prejudice. However, legal expenses were in excess of \$25,000.

Although copyright claims are most often brought against architects, such claims can be made against other design professionals as well. Take, for instance, a civil engineer whose services included site layout and surveying work for a developer constructing a retail shopping center. The developer initially hired a surveying firm to perform the work, and then retained the civil engineer to survey the property and do site work. When the center was constructed, the initial surveying firm sued the developer and the civil engineer for copyright infringement. The civil engineer did admit that he may have seen the previous survey, but said that his work was significantly different from the claimant's. The matter went to mediation where it was ultimately resolved. The civil engineer's proportionate contribution to the settlement was \$30,000. Legal fees of \$12,000 were also incurred.

Certainly, it is not unusual for design professionals to be asked by a client to use drawings designed by another design professional. But not taking the necessary defensive measures and determining the origination of the drawings can certainly lead to a copyright infringement claim. Also, due to the nature of these claims, they easily can generate costly legal fees, court awards or other monetary settlements.

If you are being requested to take over a project, or to design a residence utilizing another professional's drawings, there are ways to protect yourself.

As a start, even if the drawings do not have a copyright stamp, because they are architectural or other design drawings they should be considered copyrighted documents.

In spite of whether the client claims ownership of the drawings, the initial task for the design professional is to request permission from the client to contact and discuss the design with the prior design professional. In addition to this request, the contract with the client should address this matter clearly.

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The contract should include clauses that:

- (1) describe how the drawings were obtained and given to the design professional;
- (2) provide a warranty from the client asserting that the drawings are indeed owned by the client, not subject to any copyright, or have been made available with a license from the copyright holder to use the drawings; and
- (3) contain a clause where the client agrees to defend, indemnify and hold harmless the design professional from any claims arising out of copyright infringement.

If the client declines either permission to contact the original design professional or agreement to the contract clauses, the design professional needs to candidly consider whether or not it is in his best interest to continue working with this client. Otherwise, considering that copyright ownership lasts at a minimum for a person's lifetime plus an additional 70 years, the design professional could very well find himself defending a copyright infringement lawsuit sometime in the future.

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