Copyrights and Wrongs

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If you bill yourself as a "design-build" company, you're probably asked not only to design new houses from the ground up, but also to make modifications to plans customers bring into your office. These "stock" house plans often need tweaking to comply with your local code — changing the foundation type, making the stairs longer, or moving the garage doors off the street. You may also see lots of pages torn out of plan books, with customers asking you to incorporate this or that detail from one plan into another. You might even be asked to draw up a set of plans from scratch based on a photograph or floor plan a customer has clipped out of a magazine.

In all of these scenarios, you might be breaking the copyright laws intended to protect you and other designers from those who would steal the unique features you've worked hard to provide for your clients. Copyright law is complicated, so it's important to have a basic understanding of how it works, both to stay out of trouble and to make it work to your advantage.

The Law, Then and Now

It has always been illegal to copy any printed work without permission, be it a magazine article, a book, or a house plan. Until recently, however, the copyright law didn't consider the constructed version of a house plan to be a copy, so there was nothing to stop a builder from purchasing a plan and building as many houses as he or she wanted from that one plan. In addition, since the constructed project wasn't protected by copyright, it was also okay to "measure and observe" an existing building and whip up a new set of plans from notes, sketches, and photographs taken at the site.

On December 1, 1990, the copyright laws got much tougher regarding architectural design. Today, the constructed building, called the "Architectural Work," can be copyrighted as well as the physical plans. If someone is caught building multiple projects, or copying or incorporating someone else's design ideas without permission, the penalty is more than a slap on the wrist. In North Carolina, a professional building designer was recently awarded $60,000 from a builder who illegally built six versions of a single-use plan he had purchased. Similar awards are now commonplace throughout the United States.

Copyright infringement usually falls into one of four categories. Here's how to deal with each one.

Reuse Without Permission

When you buy a house plan or contract with a designer, you should assume that all you are buying is the right to use the plans for a single project. Of course, like all contracts the terms can be negotiated, and there is nothing wrong with selling a plan for multiple uses — or even selling the design outright — as long as all parties agree to the terms. If a client brings you a plan, it's up to you to confirm that they have the right to distribute and build it. Likewise, if you're selling the client design services, make sure they understand what you will and won't allow them to do with the finished product. Some designers are now handling the reuse issue by licensing the design for construction (see "Sample License Agreement"). A license agreement lets you spell out exactly what can and can't be done with the plans. All notices must be in writing, and ideally should be on each sheet of the drawings.

Unauthorized Modification

Only a design's "copyright owner" has the right to grant permission to modify it. Just because your customers bought a copy of a plan does not mean they can legally have you or anyone make changes to it. Some plan companies will sell "reproducible" copies for that purpose, but beware: You need to verify that the copy presented to you is legit. It's easy enough to take a reproducible drawing to Kinko's and make a full-sized copy. Normally, the original will bear a stamp in colored ink (see sample stamp). If that stamp is in black ink when you get the drawing, there's a

Sample License Agreement

The original purchaser of this plan, # ___, is granted a limited non-exclusive and non-transferable license to build one and only one home using this plan. Use of this plan to build more than one home is prohibited. The plan may not be reproduced or transferred without the express written permission of the copyright owner. The plan may be modified for code compliance only to secure a building permit for one project. Said modifications become the property of the copyright owner. Any other modifications require the express written permission of the copyright owner.

Before modifying a so-called "reproducible" plan, check for a stamp like this one in colored ink. If the stamp is black or missing, the plan is probably an illegal copy.

good chance you're working with an illegal copy.

Ignorance is no excuse. If you modify something without permission from the copyright owner, you can still be sued, regardless where you got it from. The best policy is to always contact the designer and get permission, in writing, before making any changes.

On the flip side, if you provide plans for someone, you should clearly spell out what they can and can't modify. Many designers allow builders to make code modifications, but draw the line at changes that could affect the look of the project. You should put the "can's and can'ts" on a sheet attached to the plans, and make references on each individual sheet. Better still, include a license agreement in your design contract and spell out the terms there.

Copying a Plan from a Plan Book or Copying an Existing Home

Homes designed and built prior to the 1990 copyright change can probably be recreated by "measurement and observation," with little, if anything, the author of the original drawings can do about it. Anything newer than 1990, however, is still the intellectual property of the original designer. You don't have to copy the blueprints to get in trouble: Starting from a page in a plan book, which is probably derived from the original work, is just as bad.

A fundamental principle of copyright is that an author may not copyright ideas contained in a work, just the *expression* of those ideas. This principle precludes protection for common, generic themes in architecture or design. What it means to you is this: If your clients see something they like in a plan book, instead of clipping it, have them describe it to you. "A colonial house with two side wings and a fancy front door and a kitchen in the back" is generic and open to your interpretation; tracing over the picture in the plan book is not.

Buildings Built from Preliminary Plans

Because a constructed building is now considered a "copy," if you build from a preliminary plan or conceptual design, you are stealing the intellectual work of the copyright owner. If you are the designer and don't want your plans peddled to other builders, the best defense is to plaster the drawings with "Not for construction" disclaimers and the like, and exclude their use in your design contract with the client. Communication is critical. Many times people don't understand that you're producing something that they can't take elsewhere.

Register Your Work

As of March 1, 1989, it is no longer necessary to place written notice of copyright on an original work, but it is still a good idea to do so. A notice makes the end user aware that you're serious about protecting your copyright, and helps establish the date of creation or publication. The notice must contain three elements: the statutory symbol (©) or the word "Copyright," the date of creation or first publication, and the copyright owner's name (see "Sample Copyright Notice"). The author and the copyright owner don't necessarily have to be the same person.

In addition, the 1990 law permits you to register both the "architectural plans" (the drawings) and the "architectural work" (the design). Registering both requires two separate applications and fees ($20 each). Designs produced prior to 1990 can still be registered, but as "architectural plans" only.

Why register? Unregistered designs are technically protected, but you won't be able to file suit in court until you formally register the work in question. Filing before infringement occurs, or within 90 days of publication in a plan book, entitles the copyright owner to additional damages that would not be awarded otherwise, including statutory minimum damages and attorney's fees. Without prior registration, legal fees alone would likely cancel any net gain from a win in court.

Everything you need to register your copyright is available from the Federal Copyright office in Washington, D.C. (202/707-9100); ask for form VA. Forms can also be downloaded from the Web (www.loc.gov/copyright/forms/).

Sample Copyright Notice

Copyright © 1998 by David A. Designer: These plans are protected under the Federal Copyright Laws. The original purchaser of this plan is authorized to construct one and only one home using this plan. Modification or reuse of this plan is prohibited without the express written permission of the designer.

Georgia Toney Lesley, a professional building designer based in Summerville, S.C., is the national copyright committee chairperson for the American Institute of Building Design. ***David E. Bennett****, J.D., is a partner in the firm of Rhodes, Coats, and Bennett in Raleigh, N.C., and is registered to practice before the United States Patent and Trademark Office. His manual,* Copyright Basics for Home Designers and Builders, *is available from AIBD (800/366-2423).*