



## **You Paid to Build the Building, But Do You Own Its Design?**

By [Kelly Gindele](#)  
[kgindele@dbllaw.com](mailto:kgindele@dbllaw.com)

An owner can spend millions and millions of dollars to design and construct a state-of-the art, one-of-a-kind building. But to the surprise of many owners, paying for the building's design does not automatically equate to owning that design. The Architectural Works Copyright Protection Act of 1990 gives "architectural works" copyright protection. This includes the design of any permanent, habitable structure, such as office buildings, hospitals, homes, restaurants, hotels, and museums.

Copyright protection provides a wide array of implications. The copyright owner wields great power of the copyrighted work, including controlling who makes copies of the copyrighted material. No one can copy, use, sell, or distribute the copyrighted material without the copyright owner's permission. Further, the copyright owner can reproduce derivative works based on the copyrighted material. In other words, a building's design could be used to construct duplicative buildings over and over again.

As a result, the ownership of design drawings is an important and sometimes overlooked issue. By default, the architect owns the copyright of design documents and drawings, as the author of the work. This is not changed simply by the fact that the owner paid the architect to design the building. Further, the copyright attaches to the documents as they are created. The architect does not need to register or apply for copyright protection. A building owner can only secure copyright ownership via written agreement with the architect. Such agreement involves transferring copyright ownership from the architect to the building owner.

If the building owner fails to negotiate a transfer of the copyright and then proceeds to infringe upon the architect's copyright, there can be significant consequences. The architect can seek injunctive relief against further infringement, meaning the building owner could potentially be required to halt construction entirely. Further, the architect can be awarded the right to impound and even destroy the infringing copies of the documents. The architect could even be awarded damages, profit recovery, and costs and attorney's fees.

Most standard owner-architect contracts tend to preserve an architect's rights to the ownership of design documents. Without significant modifications to these standard agreements, including those developed by the American Institute of Architects ("AIA"), building owners generally have no copyright ownership of the documents. Unmodified AIA agreements expressly provide that the architect retains document ownership, including copyrights. The building owner simply obtains a license to use the documents for certain permitted purposes. Often this includes the construction of building, so long as the architect continues to be paid. The license does not extend to future buildings or even future alterations or additions to the current building. Further, if the AIA agreement with the architect is terminated, the license too is terminated. Consequently, the building owner must cease to use the documents and return all copies to the architect within seven days.

The architect's default or express copyright protection could potentially hinder the building owner's initial construction or future modifications. Therefore, the building owner should seriously consider negotiating alternative terms to either expand its license rights or even transfer copyright ownership.