

Getting The Right Angle On Copyright In Architectural Works

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When people think about copyrights and what they protect, they normally think of books, pictures, or music. What most people do not realize is that copyright protection is equally applicable to the set of blueprints you reviewed this morning, and to a slightly lesser extent to the office building you are sitting in right now. Understanding copyright law is as important to the builder and architect as it is to the author, artist and musician.

The Basics

Architectural works gained their current level of protection under U.S. Copyright law in 1990 with the passage of the Architectural Works Copyright Protection Act. An architectural work under the Act is defined as the design of a building as embodied in any tangible medium of expression, including the building itself, architectural plans, or drawings. The protected work includes the overall form of the structure as well as the arrangement and composition of spaces and elements in the design. Protection is not, however, extended to standard or functional features of a building, such as common windows, doors, and other standard building components. Additionally, protection only applies to habitable structures including homes, apartment/office buildings, churches, etc. Non-habitable structures such as highways, bridges, and walkways are excluded from protection.

Copyrights in architectural works carry with them essentially the same rights as other copyrights. Given their unique nature, however, two distinct exceptions are carved out of the protected rights once an architectural work is constructed. First, there is no right to prevent the making, distribution, or public display of pictures, paintings, photographs, or other pictorial representations of the work, if the building is located in or is otherwise ordinarily visible from a public place. Second, the owner(s) of the building that embodies the architectural work may make or authorize the making of alterations to the building, and may destroy or authorize the destruction of the building without the consent of the author or copyright owner of the architectural work.

Understanding Infringement & Protecting Your Architectural Works

Copyright infringement is the violation of any of the copyright owner's exclusive rights, which include the rights of reproduction, preparation of derivative works, distribution, display, and performance. Infringement does not require any wrongful intent on the part of the copier, it only requires unauthorized copying. The penalties for infringement can include statutory damages ranging from

\$750 to \$30,000 for each act of infringement and up to \$150,000 if the infringement is found to be willful. As an alternative, the copyright owner may seek to recover his/her actual damages plus the infringer's profits attributable to the infringement. Some examples of infringement of copyrights in architectural works include the unauthorized copying of original building plans, duplicating an existing building either from that building's original plans or from the building itself. Because actual direct copying is often difficult if not impossible to prove, the federal courts may infer copying when it can be demonstrated that the accused infringer had access to the copyrighted work and the new work is substantially similar to the copyrighted work.

While not a prerequisite to copyright protection, registration provides many benefits: registration is required prior to filing an action for copyright infringement in federal court; registration provides the ability to recover statutory damages and attorneys' fees in the event of infringement; the registration creates a public record of your work which can serve as an excellent piece of evidence that the copyrighted content is owned by you.

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Owners of copyrights in architectural works should take appropriate measures to protect their rights. For instance, if you utilize a Website to promote your business, it is advisable to incorporate a disclaimer into the Website that informs visitors of your rights in your copyrighted works. The language of such a disclaimer should include a statement that any designs displayed on this Website are the copyrighted works of the builder and are provided for advertising and educational purposes only and may not be copied without the express written permission of the builder. ■

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