

# Protecting Your Intellectual Property Rights in Architecture and Residential Design

Background, Rights, and Remedies

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LAW OFFICE OF

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# What is a Copyright?

- Copyright gives authors a property right in their creative expression.
- Copyright owners have a “bundle of rights” that are associated with their work and that they can use to ensure others don’t steal or misuse their creative expression.
- Copyright is granted to authors by federal law.
  - Title 17 of the US code.

# Copyright Requirements

- There are two general requirements; the work must be:
  - **Original to the Author.**
  - **Fixed in a tangible medium of expression.**
    - **Written down, stored in a file, molded in clay, etc.**
- There are a broad array of works that fall under copyright protection.

# Types of Copyrighted Works

- Literary Works
- Audio/Musical Works
- Dramatic Works
- Web Sites
- Choreographic Works
- Sculptural Works
- Movies/Audiovisual Works
- Pictures/Photographs/2-Dimensional Art
- Computer Programs/Computer Code
- **Architectural Works**



# Your 'Bundle of Rights' Under Copyright Law

- **Exclusive rights:**
  - **Reproduction/Copying**
  - **Creating Derivative Works**
  - **Distribution**
  - **Public Performance**
  - **Public Display**



# Common Misconception - Trying to Copyright Your Ideas

- Ideas cannot be copyrighted.
- Copyright protects the *expression* of your ideas.
  - E.g. – An architect may be able to copyright the particular layout of a building as manifested in the building itself, but not the idea of putting a door in the front of the building.

# Copyrights Available for Residential Design

- **Works that you can copyright:**
  - **Blueprints/plans for building**
  - **Models of buildings**
  - **Pictorial mock-ups**
  - **Computer generated images/designs**
  - **The building itself**

# Copyrighting Buildings

- **Buildings defined: “structures that are habitable by humans and intended to be both permanent and stationary, such as houses and office buildings and other permanent and stationary structures designed for human occupancy, including, but not limited to, churches, museums, gazebos, and garden pavilions.”**



# Restrictions on Copyrighting Buildings

- No copyright protection for: bridges, cloverleaves, dams, walkways, tents, recreational vehicles, mobile homes, and boats.
- Buildings are only copyrightable if they have been built after December 1, 1990.

# Functionality Doctrine

- Copyright is only for the protection of *creative* works.
- Copyright does not cover works that are functional in nature.
- Residential design:
  - Can't copyright standard configurations of spaces and individual standard features, such as windows, doors, and other staple building components.
  - Can't copyright functional elements of building/design that were created where utility was the primary consideration.

# Registering Your Copyright

- A copyright exists in an eligible work as soon as the work is fixated (written down, etc.).
- You may still register your copyright with the Copyright Office.
- Benefits of registering your copyright:
  - Allows you to file suite for another's infringement.
  - Puts others on notice that work is copyrighted.
  - Makes litigation cheaper and easier should there be a need to sue someone for infringement.

# Works Made for Hire

- When an employee, while working within the scope of his employment, makes a work for an employer, including an architectural work, the employer is considered the author of the work, not the employee.
- Must be a clear employer-employee relationship.
- Independent contractors are not considered employees.
- Can be stated explicitly in the contract.

# Duration of Copyright

- Copyrights do not last forever.
- Duration of works made for hire:
  - **Whichever is less:**
    - 95 years from the date of publication.
    - 120 years from the date of creation.
- Duration of works not made for hire:
  - **Life of the author plus 70 years.**



# Copyright Infringement

- Occurs when an unauthorized person violates your 'Bundle of Rights'. (reproduction, distribution, etc.)
- Exceptions to copyrights in buildings:
  - Publicly visible buildings may be photographed, painted, etc.
  - The owner of a building (as opposed to owner of a copyright in the building) may alter the building without limitation.

# Fair Use/De Minimis Use

- **Fair Use**
  - **Criticism**
  - **Comment**
  - **News Reporting**
  - **Teaching**
  - **Scholarship**
  - **Research**
- **Fair use absolves infringer of liability.**
- **De Minimis Use**
  - **Infringer did not substantially infringe, and so there is no liability.**

# Design Patents

- In addition to copyright protection, architectural design may be eligible for a design patent.
- **Benefits:**
  - Actual copying not needed for infringement.
  - Does not have to be separated from functional item.
- **Drawbacks:**
  - Requires filing and filing is more expensive.
  - Only get protection for 14 years.
  - No statutory damages.



# Damages

- Copyright infringement offers 2 types of damages:
  - Statutory Damages
    - \$750-\$30,000 per infringement.
    - “Willful infringement” up to \$150,000
    - “Innocent infringement” down to \$200
  - Actual Damages
    - Money owner lost due to infringement, or
    - Profit infringer made from infringing copyright.
- Attorney’s Fees are also available for works that are registered before infringement occurs.

# Common Problem with Architectural Copyrights

- Prospective home owner hires architect to design house.
- Before completion, architect quits, gets fired, etc.
- Home owner hires new architect to finish house.
- Original architect may own rights to all plans, new architect cannot use plans without permission from old architect.

# Difficulties With Intellectual Property and Residential Design

- Architectural intellectual property is harder to protect because:
  - The functionality doctrine.
  - The originality requirement.
  - The substantial copying requirement.

# For More Information:

- Contact the Copyright Office at:



- <http://www.copyright.gov/>
- U.S. Copyright Office  
101 Independence Ave. S.E.  
Washington, D.C. 20559-6000  
(202) 707-3000
- Contact an attorney to find out the options that are available to you.

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