



Copyright Issues in Architectural Design

by Nancy Wilkins

Stock plans, floor plans out of magazines, photos that you've gathered over the years of kitchens or great rooms you love – almost everyone who is considering have a timber frame home built has a file folder filled with clippings like this, waiting to be pieced together into THE dream home. Finally, you make the decision to hire a designer and move ahead with your project. It's an exciting time - but do be careful.

You may be breaking copyright law.

Copyright infringement and responsibility is an issue that affects everyone in our industry, from the designer trying to protect his or her designs, to the company trying to satisfy a customer, and that very customer who comes in the door with plans they want to use, but may not own. Everyone in that circle may be at risk of major copyright penalties and not even know it. With awareness and care, the pitfalls can be avoided.

Copyright law is covered by the 1976 Copyright Act, as amended Dec. 1, 1990. The original copyright law gave owners of original work the exclusive right to reproduce their work, prepare derivative works, distribute copies, and to display the work publicly. The 1990 amendment broadens the protection, in architectural work, to cover the original design of a building – the form, arrangement, and composition of spaces and elements.

What does this mean to the homeowner, who's being enticed with a steady stream of floor plans in magazines, plan books, show homes and style books?

For starters, you may not copy a design outright, by taking it to a designer and asking them to create construction drawings for you, or taking it to a builder and asking them to build it. If you see plans you like, you must contact the owner of the copyright and buy the right to use the design.

There seems to be a general belief in the marketplace that small modifications to a plan eliminate copyright protections – this is not true. Modifying an existing plan is not allowed. Only the design's copyright owner has the right to grant permission to modify the design or to build the house.

Preliminary drawings may not be “shopped around” without permission. Building from someone else's preliminary plans is considered stealing the intellectual work of the copyright owner. Often, this is a communication issue—clients tend to feel that they have paid for the plan development and own it at that point, and can use them to shop around for a builder—so it is important to make sure you understand your rights when you pay to have a set of plans developed. You may be working with someone who is willing to grant you full usage rights; if so, get that specified in writing.

Multiple homes may not be built from a single set of plans – building more than one house from a plans without permission is a copyright infringement.

Copying a home from real life is not allowed. Any home built since 1990 is the intellectual property of the original designer, and you may not recreate it even if you go measure it and draw it up yourself. The test that courts have based their rulings on is whether an ordinary person, with no building background, on examining the two designs, would become confused as to which was done by the original designer (from *Building Systems Magazine*, November–December 1996).

So what's a person to do? Here's how Georgia Toney Lesley, the 1998 chair for the national copyright committee for the AIBD, describes the situation: "The author cannot copyright ideas contained in a work, just the expression of those ideas...If your clients see something they like in a plan book, instead of clipping it, have them describe it to you." An example might be to say, "We like a bungalow style with the porch on three sides" so the ideas are generic and open to the designer's interpretation.

Make sure that when you hire a firm to design your home, you understand the rights you will enjoy with the drawings. Who will own the copyright, what will be allowed? Can you shop the plans around to other builders, or is the designer a part of a company that will own your plans, and will be expecting to build them? From an industry perspective, this is a very important issue. With custom design/build companies, projects line up in a "pipeline" that can be a year and a half to two years long, and the production schedule in the shop depends on the design work that the company has been engaged to do. So companies are definitely paying attention, and many will actively pursue designs that are illegally pulled out of the process.

In the end, any party, from the builder to the owner to the copy shop, who participates in a copyright violation may be responsible for the penalties – whether or not they were aware of it. As usual, ignorance of the law is no excuse. The penalties for infringement can be severe. At a minimum, the architect-designer's normal fee plus any profits made on the job will be assessed, and the law allows damages as high as \$100,000 plus legal fees.

Please respect the artistry, training and skill that goes into good home design. Think about the way you communicate the information about the design you like, and do so in such a way that you are sharing general concepts, not a single designer's way of expressing those concepts. If you like an individual designer's work, be prepared to pay for it, as you would expect them to pay for yours. And have a wonderful timber framing experience!

Resources.

Copyright Basics for Home Designers and Builders, by David E. Bennett, J.D. (800-366-2423). This manual, available from the American Institute of Building Designers (AIBD), offers information and language samples for license agreements.

What You Should Know about Home Plan Design Copyrights

Council of Publishing Home Designers

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The National Association of Home Builders 800-368-5242 ext 359.

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