



House Plans & Copyright

This information sheet provides a brief introduction to copyright issues for builders, draftspeople and architects, as well as for people who engage a builder, draftsman or architect to draw a house plan for them. Where we have referred to a “builder”, the comments apply equally to a draftsman or architect.

For a more detailed discussion, see our book *Architects & Copyright*.

For information about our other information sheets, publications and seminar program, see our website www.copyright.org.au

We update our information sheets from time to time. Check our website at www.copyright.org.au to make sure this is the most recent version.

The purpose of this information sheet is to give general introductory information about copyright. If you need to know how the law applies in a particular situation, please get advice from a lawyer.

Key points

- House plans, including those produced by project home companies, are protected by copyright.
- Generally, a person who commissions someone to draw up a house plan will have an “implied licence” to construct a building based on the plan.
- Ideas, styles and techniques are not protected by copyright. It is the way in which a particular plan expresses an idea or style that is protected.

Copyright protection

In Australia, copyright law is contained in the Copyright Act 1968 (Cth) and the court cases which have applied and interpreted the Act.

Copyright protects a range of categories of material, including artistic works, literary works, musical works, dramatic works, broadcasts, films, sound recordings and published editions.

Artistic works can include things such as sketches, blueprints, plans, architectural drawings and rendering, models of buildings, and buildings themselves.

What is NOT protected by copyright?

Copyright does not protect ideas, styles and techniques. For example, the idea of building a rectangular house surrounded by a verandah with an open-plan living area, French windows facing north and three bedrooms facing south is not in itself protected. However, drawings, plans, models and buildings incorporating these features are protected by copyright.

Please note that it is sometimes difficult to work out where the line between “ideas” and copyright lies. For example, in a series of recent cases, what at first glance looked like just an idea that was copied was indeed a situation where people were not just using the idea, but the way that idea was expressed in a particular builder’s set of plans.

How do you get copyright protection?

Drawings, sketches, plans, and other copyright material are protected automatically as soon as they are given “material form” (for example, by being drawn on paper, saved as a digital file, photographed or filmed). There is no registration procedure.

An owner of copyright is entitled to put the copyright notice on the work. This is the symbol ©, followed by the name of the copyright owner and the year of creation or first publication (for example, © Bob the Builder 2014). There is no special procedure for doing this, and the work is protected by copyright even if there is no notice.

What does copyright protection mean?

Copyright owners have exclusive rights to use their work in certain ways. These include the right to **reproduce** the work (for example, building a house based on a plan); to **communicate** the work “to the public” (for example, email, fax or put it online); and to publish the work.

Who owns copyright in house plans?

The general rule is the creator of the work will own copyright, so copyright in a drawing such as a house plan will be owned by the person who drew it, even if the drawing depicts another person’s ideas. However, there are some exceptions to this. For example, if the person was an employee and drawing the plan was part of their employment, it would be owned by the employer, unless there was an agreement stating otherwise.

Someone who is a freelancer or independent contractor is not an employee for the purposes of determining ownership of copyright.

For further information, see our information sheet *Ownership of Copyright*.

If you engage an architect or builder to create house plans for you, they will own the copyright, unless you have made an agreement stating otherwise. However, you will have a licence to use the plans for the purposes for which they were made, as agreed between and the other party. For example, to use the plans to build a house.

It is always a good idea to set out in writing the agreement between you and the person who is drawing up the plans. If the agreement includes a transfer (“assignment”) of copyright, the agreement must be in writing and signed by the person who would otherwise own copyright (in most cases, the “author” of the plan or their employer). For information on the kinds of issues that should be covered in these agreements, see our information sheet *Assigning & Licensing Rights*.

When do I need permission to use someone else’s plans?

In general terms, someone who is not the copyright owner needs permission to use a “substantial part” of the copyright material in any of the ways reserved to the copyright owner (such as **reproducing** or **communicating** the material). A part will be considered to be a substantial part if it is “important, essential, material or distinctive” to the original from which it was taken. In some instances, even a relatively small part may require permission.

If someone infringes your copyright, you can take legal action to stop further infringements and to seek compensation. For further information, see our information sheets *infringement: What Can I Do?* and *Infringement: actions, remedies, offences, penalties*.

Moral rights

Creators of copyright works (including artistic works such as house plans and buildings) have moral rights in relation to their work. These rights are:

- to be attributed as the creator of the work;
- not to have the work falsely attributed to another person, or to have altered work falsely attributed as unaltered; and
- not to have the work treated in a way that damages the creator's honour or reputation.

Moral rights can only be owned by individuals. However, some architectural firms make agreements with their employees under which the firm, rather than the individual architect is attributed as the creator of a work. If you receive documents such as plans on which the creator's name appears, you should ensure that any copies you make or communicate still show the creator's name.

In practical terms, moral rights issues in relation to buildings and plans are most likely to arise where a relatively well-known building is to be altered or demolished. However, the Copyright Act provides that the alteration, relocation, demolition or destruction of a building will not infringe the architect's right of integrity in the building or in any plans used to construct it, so long as the owner of the building complies with a notification procedure.

We discuss the notification procedure further in our publication *Moral Rights: A Practical Guide*.

Frequently Asked Questions (FAQs)

I'm paying a builder to draw a plan based on my ideas and sketches. Who owns copyright?

Even if you have discussed your ideas and requirements and asked the builder, architect or draftsman to draw up plans incorporating those ideas, the copyright owner will generally be the person who drew the plans. At most, someone giving instructions to a builder, architect or draftsman as to how plans should look might be a co-owner of copyright. However, ideas themselves are not protected by copyright: it is the person who expresses those ideas in a particular material form who owns copyright in that particular work.

If you have drawn up a sketch showing what you want and asked the builder to draw up scale plans, it is likely that you own copyright in your sketch and the builder will own copyright in his or her plan. If the plan incorporates the essential features of your sketch, it is likely that you have "underlying rights" in the builder's plan, since copying the builder's plan will indirectly reproduce your plan. In these cases, someone else who uses the plan (such as another client of the builder) might need permission from both you and the builder.

Of course, if your sketch incorporates essential or distinctive elements of someone else's sketch, plan or house, you are likely to need permission from that copyright owner both to include those elements in your sketch and to "authorise" the builder to reproduce it.

Can I use a plan in a brochure as the basis for my house?

You usually need permission from the owner of copyright in the plan if you reproduce important or distinctive parts of it. The fact that the plan is published in a brochure does not mean that you have permission to reproduce it.

Can I photocopy plans of a development application for the property next door?

Since you may be affected by the development, you may be able to copy the plans as a fair dealing for research or study. However, the local council may not be entitled to copy the plans for you. Some councils overcome this problem by asking people submitting development applications to provide multiple copies of the plans, or to give express permission for the plans to be copied for these purposes.

I want to sell my house with the renovation plans which I've had approved by the council. Do I need the architect's permission?

Depending on the terms and conditions of your agreement with the architect, an implied licence to build may be transferable to the new owner of the land. However, you should read the agreement carefully. In some cases, architects' contracts specify that the client does not receive a licence to reproduce the plans (in further plans or a building) until they have paid the fees; or that the licence cannot be transferred without the architect's permission.

Generally, vendors and buyers may need to consider getting specific advice on this issue from a solicitor with the relevant expertise. The Law Society in your State or Territory should be able to refer you to a solicitor in your area.

I have paid a builder to draw a plan. Can I ask another builder to build the house?

In many cases, you will need permission from the first builder to build a house based on the plan. This is because the builder is likely to own copyright in the plan, and you may not have an implied licence to build using another builder. You should seek legal advice if you are considering building from such a plan without the builder's permission. If you decide not to build from that plan, it is advisable not to show that plan to anyone you subsequently ask to draw a new plan for you. If the second person does see the earlier plan there may be an inference that that person has consciously or subconsciously copied original elements of the earlier plan.

My builder has gone out of business without completing my house. Can I engage another builder to complete the house?

Depending on your agreement with the builder and other surrounding circumstances, you may be entitled to engage another builder to complete the project. If the builder owns copyright in the plans, you may need to seek legal advice to clarify your position. If you do require permission, copyright may be controlled by the receiver appointed to administer the builder's business.

How many changes do I have to make to avoid infringing copyright in house plans?

There is no general amount or percentage that you can use before you have a copyright issue. If you have reproduced any important or distinctive elements of the other person's plan, you will not avoid infringement by making additions or changes. These elements may include features such as: the internal arrangement of rooms, windows, and doors; the indication of spaces; the design of the roof; and the dimensions of the building. In some circumstances, copying the perspective or the balancing of features may infringe copyright.

My plans are very simple, will I infringe copyright if they turn out to be very similar to someone else's plans?

Copyright is not infringed if a person coincidentally produces a plan which is similar to another which the person has never seen. This may occur if the plan is very simple or involves a common combination of features (such as building a standard 3-bedroom house with kitchen, laundry, bathroom, lounge/dining room and garage on a standard-sized rectangular block of land).

If I pay for an Architect to design my home who owns the physical CAD files?

Copyright ownership is different to ownership of a physical item, such as a CAD file. Ownership of the physical file is a property law issue and is not related to copyright. Even if you own copyright in the house plans, the Architect may be under no obligation to provide you with the physical CAD files unless this was specifically set out in your agreement.

Further information

For further information about copyright, see our website, www.copyright.org.au

If you meet our eligibility guidelines, a Copyright Council lawyer may be able to give you free preliminary legal advice about an issue that is not addressed in an information sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions and libraries. For information about the service, see <http://www.copyright.org.au/legal-advice/>

Reproducing this information sheet

Our information sheets are regularly updated - please check our website to ensure you are accessing the most current version. Should you wish to use this information sheet for any purpose other than your reference, please contact us for assistance.

About Us

The Australian Copyright Council is an independent, non-profit organisation. Founded in 1968, we represent the peak bodies for professional artists and content creators working in Australia's creative industries and Australia's major copyright collecting societies.

We are advocates for the contribution of creators to Australia's culture and economy; the importance of copyright for the common good. We work to promote understanding of copyright law and its application, lobby for appropriate law reform and foster collaboration between content creators and consumers.

We provide easily accessible and affordable practical, user-friendly information, legal advice, education and forums on Australian copyright law for content creators and consumers.



Australian Government



The Australian Copyright Council has been assisted by the Australian Government through the Australia Council, its arts funding and advisory body.

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