

## Architectural Designs - What Is It That You Pay For?

**A commercial tension exists in the construction industry between property developers who commission the creation of a design for the building of a structure and the architects who create the design.**

This tension arises because property developers often believe that they have paid for ownership rights in the design, when in fact what they have paid for is the right to use the design on a particular site.

The difficulties often arise through a lack of understanding of how copyright law operates in this area. When the contract is negotiated between the property developer and the architect, the fundamental issue of ownership is often not addressed properly by the parties.

If the plans for and models of the design of a building are original and have not been copied from another source, they are considered to be an artistic work under the Copyright Act 1968 (Cth) ("the Act"). The owner of the plans and models is entitled to claim copyright in them and can prevent another person from reproducing a substantial part of the work in a material form or making an adaptation of the work without the owner's permission. This is subject to certain exceptions, which are discussed below. Reproduction in a material form includes both two-dimensional (copying the plans) and three-dimensional reproductions (constructing the building).

The owner of the plans for the design of a building is not automatically the person who has paid for the plans. In fact, under the Act, the owner of the plans is:

- the author of the plans;
- the author's employer, if the plans were designed in the course of employment; or
- the person to whom the author, or the employer of the author, has given a written assignment of copyright in the plans.

The commissioning of an architect to design a building is not considered to be "in the course of employment". If a property developer wants to own the designs in a building to the exclusion of everyone else (including the architect), he/she must obtain a written assignment of the copyright in the plans.

However, although the property developer may not own the copyright in the commissioned plan for a building, it has been clearly established that, in certain circumstances, the developer may have an implied licence to use the plans for the purpose for which they were commissioned: to build the building. The main prerequisites for

establishing that there is an implied licence of this nature are that:

- a fee that is more than a nominal fee has been paid to the architect for the design of the plans; and
- the initial contract between the property developer and the architect did not overrule the implied licence.

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