

Whose Plan Is It?

If you are like many people who attend the Showcase of Homes, you may have been building your dream home in your mind for years, combining ideas from several places over time. Finally the time has come for you to transform these ideas from what was once just a dream to the reality of your new home.

Though you don't have experience as a professional architect or residential designer, over time you have looked at several floor plans and developed some knowledge of home design. After drawing your unique idea out on a piece of paper, you're ready to take it to the builder you have carefully chosen over years of viewing homes.

The builder you have chosen takes that rough drawing and makes it an official blueprint by using its in-house residential designer. You've paid for the plan and are ready to start your home-building journey. After your home is complete and you're all moved in, you see a house very similar to yours go up in the same neighborhood by the same builder.

How can the builder use your unique ideas and turn them into a copycat home? After all, you paid for the plan, so doesn't that make it yours? Not necessarily... Under the Copyright Act of 1976, payment for architectural or construction plans does not give exclusive rights to the purchaser, unless this was a written term of the original agreement.

Even though the ideas and rough sketches were originally yours, in the case of home construction documents, the architect, engineer or residential designer who formally draws up the plans are almost always considered the author of the plan and the owner of the copyrights.

So what did you purchase when you paid the builder for the plan? Unless there was an express written agreement to transfer the copyrights to you or to provide you an exclusive license, all you purchased is a non-exclusive license to use the plans to build your home. This means that you can complete your home without further permission based on the copyrighted designs, but that is the only right you have in regard to your plans.

You may be wondering: if I do not even own the plans, am I liable for copyright infringement by constructing this home using ideas from several different plans? The answer is: maybe. **You do need to be careful.** The plan does not need to be an exact copy for you to be liable for copyright infringement. The more original and unique your sketches, the more likely you do not violate the copyrights of a third party.

It gets even more confusing considering there have been amendments to the Copyright Act since 1976. Under current law, copyright protection with respect to home construction is found in two different ways:

1. The protection of the design plans (blueprints or floor plans); and
2. The protection of the completed structure (extending to the overall appearance).

This means that both the drawings/floor plans and the actual constructed home are protected under the Copyright laws. While the Showcase encourages participants to view the homes to get ideas, the floor plans and front elevations you are reviewing are for informational purposes only. You are not allowed to copy plans from the guide book

without the copyright owner's permission, or it is an act of infringement. Even if you don't copy a plan, if you have a builder construct your home using the same features as a third party's home or as was found in the booklet, it is a violation. How much change is required to avoid liability for copyright infringement? Only a judge or jury knows.

Below are some tips for protecting yourself when it comes to copyright infringement.

How to protect your unique ideas:

1. Once your plans are formally drawn, obtain a transfer of copyright ownership or have the architect or residential designer grant you an exclusive license to the copyrighted work. This must be an agreement in writing signed by the owner of the copyrights.
2. Take care when signing agreements. For example, the American Institute of Architects' standard agreement would grant you a mere non-exclusive license while granting additional power to the architect not implied by law. You could end up with fewer rights than if you had no written agreement at all.
3. Formally register the copyright once you have obtained ownership. Registration is necessary to pursue a claim for infringement of one's copyright and the legal remedies available for infringement are broader for post-registration infringement than pre-registration infringement.

How to protect yourself from potential litigation:

1. If you are replicating a plan or even a specific feature of a plan in any way, ask the builder or homeowner where the plans or ideas originated. Once the owner of copyright is identified, you can attempt to obtain legal permission to adopt or incorporate aspects of the design into your future home.
2. Never ask a builder to copy the design or finished appearance of another builder.
3. Contrary to popular belief, a copyrighted work that is publicly published does not entitle the general public to use it freely.
4. Make sure to ask your builder to confirm that it has the right to build the plan or design you are considering, either through the builder's ownership of the copyrights or by written permission/license from the copyright owner.

When dealing with copyrights, it is always better to be safe than sorry. Litigation is expensive and damages can be excessive. When looking to borrow an idea from an existing house, find the true copyright owner of the plans and obtain written permission to use a design. This will save you considerable time and expense down the road.

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