



# Building Plans & Copyright

This fact 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 building plans for them.

Our [Copyright Essentials](#) book provides in-depth guidance on the provisions of the *Copyright Act 1968* (Cth) (Copyright Act) set out in this fact sheet. It is available for purchase from our website: [copyright.org.au](http://copyright.org.au). Information about our education programs is available [here](#).

The purpose of this fact 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

- Building 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 form in which a particular plan expresses an idea or style that is protected.

## 1. Copyright protection

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

Copyright protects a range of categories of material, including artistic, literary, musical and dramatic works, as well as subject-matter other than works such as broadcasts, films, sound recordings and published editions.

Under section 10 of the Copyright Act, the term 'artistic work' includes:

- (a) a painting, sculpture, drawing, engraving or photograph, whether the work is of artistic quality or not
- (b) a building or a model of a building, whether the building or model is of artistic quality or not, or
- (c) a work of artistic craftsmanship.

Copyright will subsist in these materials regardless of whether or not they are of artistic quality. Material falling outside these categories will not be considered artistic works.

The copyright in a building or model is separate from any copyright in architectural plans for the building as drawings.

A 'drawing' is defined inclusively to mean a diagram, map, chart or plan. Drawings generally involve a representation of some object by a pictorial line or some other delineation of form in pen,

pencil or crayon. A drawing can be composed of text, provided that the text is not designed to convey a semiotic meaning. Drawings are perhaps the single most important type of artistic work and cover a wide range of works which may possess little or no artistic merit. Therefore, artistic works can include things such as sketches, blueprints, plans, architectural drawings and rendering, models of buildings, and buildings themselves.

### **1.1 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.

It is sometimes difficult to work out where the line between ideas and copyright lies. For example, sometimes what at first glance looks like just an idea that was copied is a situation where people are not just using an idea, but the way that idea is expressed in a particular builder's set of plans. See further [Ideas: Legal Protection](#).

### **1.2 How do you get copyright protection?**

Drawings, sketches, plans, and other copyright material are protected automatically as soon as they are given material form (e.g. by being drawn on paper, saved as a digital file, photographed or filmed). There are no registration or copyright notice formalities required for subsistence or enforcement of Australian copyright.

An owner of copyright is entitled to put a 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 (e.g. © Australian Copyright Council 2022). There is no special procedure for doing this and the work is protected by copyright even if there is no notice.

### **1.3 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 (e.g. by building a house based on a plan); to **communicate** the work to the public (e.g. by email or placing online); and to **publish** the work.

### **1.4 Who owns copyright in building plans?**

The general rule is the creator of the work will own copyright in materials, so copyright in a drawing such as a building or 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 general rule. 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.

A person who is a freelancer or independent contractor is not an employee for the purposes of determining ownership of copyright. For further information, see our fact sheet [Ownership of Copyright](#).

If you engage an architect or builder to create building 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 (e.g. 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 an 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 types of issues that should be covered in these agreements, see our fact sheet [Assigning & Licensing Rights](#).

## **2. 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.

There are some specific sections in the Copyright Act in relation to buildings and models of buildings. It is not an infringement of the copyright in a building (or a model of a building) to make a painting, drawing, engraving or photograph of it or to include it in a cinematograph film or television broadcast, section 66.

Where copyright subsists in a building, it is not infringed by a reconstruction of that building. Similarly, where a building has been constructed in accordance with architectural drawings or plans in which copyright subsists with the licence of the copyright owner, that copyright is not infringed by a later reconstruction of the building by reference to those drawings or plans: section 73.

If someone infringes your copyright, you can take legal action to stop further infringements and to seek compensation. For further information, see our fact sheets [Infringement: What Can I Do](#) and [Infringement: Actions, Remedies, Offences and Penalties](#).

## **3. 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:

- the right to be attributed as the creator of the work
- the right not to have the work falsely attributed to another person, or to have altered work falsely attributed as unaltered, and
- the right 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 change, 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 under section 195AT(3) of the Copyright Act. It will also not infringe the architect's right of integrity in the building if the owner of the building, after making reasonable enquiries, cannot discover the identity and location of the architect.

A notice given to the architect must be in writing and state the owner's intention to carry out the change, relocation, demolition or destruction. It must state that the architect may, within three weeks from the date of the notice, seek access to the building to make a record of the building or consult in good faith with the owner about the change, relocation, demolition or destruction. If the building is to be changed or relocated, the architect may require the removal from the building of their identification as author.

## Frequently Asked Questions (FAQs)

I am 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. Ideas 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 their plan. In *Coles v Dormer* [2016] a set of architectural and structural plans were found by a judge to be artistic works, however the judge also found that the initial 'ideas sketch' provided by the client to the architect might also be an artistic work.

If the plan incorporates the essential features of your sketch, you may 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 another person's sketch, plan or house, you are likely to need permission from the 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 will 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?

As 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 have 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 their solicitor when buying or selling a property.

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 the 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 building 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 another 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 plan (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 building or 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 and advice**

We also have a range of other fact sheets on a number of topics and publish books that focus on specific interest groups. Check our website for information about our publications [here](#) and details of our seminar/webinar program [here](#).

We can provide this fact sheet in an accessible format or in hard copy on request.

An Australian Copyright Council lawyer may be able to give you free preliminary legal advice about an issue not addressed in a fact sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions and libraries. For further information about the service, see [Legal Advice](#) on our website [copyright.org.au](http://copyright.org.au).

### **Reproducing this fact sheet**

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

## About us

The Australian Copyright Council is an independent, not-for-profit, non government 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. Our objectives include:

- to assist creators and other copyright owners to exercise their rights effectively
- to raise awareness in the community about the importance of copyright
- to identify and research areas of copyright law which are inadequate or unfair
- to seek changes to law and practice to enhance the effectiveness and fairness of copyright
- to foster co-operation amongst bodies representing creators and owners of copyright.

The Australian Copyright Council respectfully acknowledges the Gadigal people, the owners and custodians of the land on which our office is located. We pay our respects to the elders and to all First Nations elders: past, present and emerging. This always was and always will be Aboriginal land.



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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