

Construction Law in North Carolina

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Protecting your Copyright in non-standard Construction Contracts (Law Note)

October 13, 2011 by Melissa Brumback



Last week I discussed [copyright issues under ConsensusDOCS and AIA form contracts](#). This week, we're taking a look at how to protect copyright in your design documents when you are not using a standard form contract.

If I've learned one thing about working with a lot of design professionals over the past decade, it is that many of them— too many— are just plain too nice. **That's right, too nice.** They send polite letters of proposal to the client, and then begin work on a [handshake deal](#). Or, they willingly sign on to the Owner's contract without pushing to negotiate more favorable, mutually beneficial contract terms. Under the maxim that "no good deed goes unpunished," sometimes such clients are giving away their copyright ownership without being appropriately compensated.

Unscrupulous, or at least naive, owners sometimes believe that because they paid for design documents, they own them and can use them for any purpose. This, of course, is *usually* not true. However, **sometimes the owner agreement states that the designer's work product is created as a "work for hire"** or otherwise provide that the owner has an unlimited ability to use the work product regardless of the circumstances. Such clauses should either be removed altogether or negotiated up front, with appropriately compensation being provided for such copyright ownership.

If you are working under a letter proposal, it should at least include language indicating that the design team maintains ownership rights in the design documents. Further, **you should make explicit that the owner has no right to continue to use design**

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documents in the event the owner terminates your contract unless and until full payment for such documents is given to the design team. Even better would be a requirement that the owner [indemnify](#) the design team from any unauthorized use of the design documents. (Hey, a girl can dream, can't she?).

Most importantly, realize that without the built-in protections of the standard agreements, it will be much more difficult to enforce your copyright ownership in your plans & drawings. For a few moments extra work on the front end tweaking your letter proposals or negotiating your owner contract, you can save countless hours of heartache on the back-end.

Do you have standard copyright ownership language in your non-form construction contract? Ever had to fight copyright issues with the owner? Share in the comments below. And, if you have not already done so, sign up for direct email delivery of blog posts right to your in-box.

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