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Word to the Wise: Owners, Beware the Architect

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In a perfect world, a project owner and its architect work as team to reach the successful completion of the project. Indeed, the architect can be invaluable in helping the owner achieve its vision for the project and in managing the construction so that it runs smoothly. However, in the event that a dispute arises between the owner and the architect, the owner should be aware that the cards are often stacked in favor of the architect, giving the architect an “unfair” advantage in negotiating a resolution to the dispute. That advantage relates to the copyrights that an architect obtains in the work that it produces for a project.

An owner of a project would understandably think that, because it had paid an architect for its services, it “owned” the drawings that the architect prepared. That is generally not the case. Specifically, pursuant to AIA B141 (1997) – one of the most commonly used form contracts between an owner and an architect – the architect retains all ownership rights, including copyrights, in the drawings, plans and specifications that it produces for a project. Conversely, the owner receives only a nonexclusive license to use and reproduce that material. If the contract is terminated for any reason, the owner’s license to use the architect’s work is also terminated – meaning the owner is barred from using or copying the architect’s work. Further, the owner must return the work to the architect within seven (7) days. A second license that enables the owner to use the architect’s work arises only after the architect is “adjudged” to have been in default of the contract. But the adjudication of the dispute can take months, if not years. A similar result occurs under the “common law” if the parties have an oral contract or if their written contract does not specifically address who holds the rights to the architect’s work.

The upshot is that an architect can potentially hold a project hostage and wrangle greater payments from the owner. Indeed, an architect can even bring suit seeking a temporary restraining order or an injunction to stop the owner from using the architect’s copyrighted plans. If successful, such a suit would cause the project to

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come to a screeching halt. This would put enormous pressure on an owner to settle the dispute on terms favorable to the architect.

Accordingly, it is important for owners to protect themselves on the front end during the negotiation of the contract with the architect. The safest route would be for the written contract to expressly state that the architect's work is "work for hire." Such a provision vests ownership of the drawings, plans and specifications in the owner. A lesser alternative is for the contract to expressly provide that the owner owns the rights to all of the architect's work for which the architect has been paid in full.

The author, or any of [Ober|Kaler's other construction lawyers](#), can help you structure the contract so that you are fully protected should a dispute arise with your architect.