

WARNING

**What you don't know about
copyright law can hurt you!**

COPYRIGHT 101 FOR HOMEOWNERS

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A 1990 change in the Federal Copyright law may have a far-reaching effect on new home buyers. If you decide to act as your own general contractor when constructing a new home, or even if you just hire a contractor to build you a new home, you could find yourself on the wrong end of a law suit for infringement of copyright.

PRIOR LAW

Before the law changed in 1990, buildings themselves were not protected by copyrights. In fact, builders often toured new construction to get ideas on how to improve their own future projects. The home styles which have developed over the past centuries, including colonial and cape cod, became recognized standards because of builders copying each other. The prior law allowed architects and building designers to protect their blue prints and written plans by copyright, but allowed everyone to copy the actual buildings once they were constructed.

CURRENT LAW

Some courts have now decided that the 1990 Architectural Works Copyright Protection Act, allows a builder to protect the design of a constructed home or even just parts of a constructed home. The courts have held that it does not matter if you intended to copy the design, if it looks "substantially similar" you may be liable for copyright infringement.

In most cases brought in court, the person suing (the Plaintiff) must offer proof through witnesses or otherwise to prove that you did something. However, in these copyright cases the Plaintiff is not required to show any direct evidence. Rather, if they can show that you merely had an opportunity to view their building, and that your building (or part of it) looks "substantially similar" that will be enough to prove you copied their design.

The test the court applies to determine if your house is "substantially similar" to another is whether an ordinary observer would conclude that your house design was taken from theirs. The test focuses on the overall similarities rather than the minute differences between the two works. Slight differences observable by close scrutiny, do not avoid infringement and you cannot avoid a finding of infringement by showing copying with variations. The courts have held that since direct proof of copying is virtually impossible to show, circumstantial evidence of copying is acceptable and can be proven by showing that you had access to the other house and that your house is similar. If copying occurred, it does not matter if it was done unconsciously and without intent to copy.

DON'T TAKE THAT BROCHURE!

Your access to another builder's home design can be shown if you had access to an advertising brochure showing a floor plan or an exterior drawing of their house. A law suit can be filed against you for infringement of a floor plan design or the exterior appearance of the home, or both.

These types of cases are being brought into court more often now and it is possible that a court could hold you liable for copyright infringement if you toured a model home and then built one that looked like it. In some cases, builders have even argued that since they had a model home in your area you could have copied the design.

DAMAGES

If you are found liable for infringing on someone's copyrighted design, the court can award actual damages equal to the profits that the plaintiff would have earned on sales of additional houses if you had not used their design.

Also, the law allows the court to impose an award of damages, without proof of actual damages, up to \$100,000.00 and to award attorney fees to the builder who is suing you.

NOT ME!

Homeowners in both Michigan and Florida have been sued in these type of law suits. In one case, the homeowner had hired a General Contractor to build the home and the General Contractor had hired a Designer to make the blueprints for the home. The homeowner only met once with the Designer to discuss design ideas, but all three (the homeowner, the general contractor and the designer) were named as defendants in a lawsuit claiming copyright infringement which was filed by another local builder.

When constructing or purchasing a new home, you should get a signed indemnification agreement from the builder or designer to protect you from a later copyright infringement action.