



TOWN OF SEWALL'S POINT BUILDING DEPARTMENT
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The Architectural Works Copyright Protection Act:

The Town of Sewall's Point is required to follow copyright laws.

INTRODUCTION

Prior to passage of the Architectural Works Copyright Protection Act (AWCPA), United States copyright law did not protect architectural constructs other than non-functional monuments. Memorials and monuments such as The Washington Monument or Grant's Tomb, possessing no utilitarian function, could receive copyright protection as sculptural works under § 102(a)(5) of the Copyright Act. Office buildings, homes, airports, and other buildings received no such protection. With no copyright protection available, they could be freely imitated or copied with no fear of prosecution for infringement. The Town of Sewall's

On December 1, 1990, the AWCPA went into effect. The extension of copyright protection to architectural works was required to fulfill our obligations as recent signatories to the Berne Convention. The Berne Convention had protected architectural works since the 1908 Berlin Revision to the Convention. For the first time, U.S. copyright law gave architects the same broad protection to their works as had been available to authors of other types of works subject to certain limitations. This modification was a monumental break from the previous 200 years of U.S. copyright law.

IMPORTANT EXCEPTIONS

There are some important exceptions to the AWCPA in § 120. Works constructed prior to the date of enactment, December 1, 1990, or based on plans published prior to that date are not covered by the Act. Only the plans themselves are eligible for copyright protection. The buildings can still be copied, for example, by making measured drawings. Section 120 further limits the scope of exclusive rights of the copyright holder. A holder of a copyright in an architectural work does not have the right to prevent the "making, distributing, or public display of [pictorial representations] of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place." Without this limitation, photographers, film makers, artists, and even tourists might be infringing every time they depicted a copyrighted building in their work.

A further limitation under § 120 gives the owner of a building embodying an architectural work the right to alter, authorize the alteration of, destroy, or authorize the destruction of such a building notwithstanding the author's right to prepare derivative works under § 106(2). The authors of the AWCPA showed foresight with this provision. Building owners must be allowed to adapt architectural works to present or future needs. Our cities would stagnate without this flexibility to adapt to changing times.

There is an important exception to § 120. Section 301(b)(4) preserves remedies available under common law and state statutes regarding "State and local landmarks, historic preservation, zoning, or building codes," relating to architectural works protected under section 102(a)(8). Just



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as owners of buildings are allowed to modify or destroy buildings to allow for new needs, cities and states may regulate construction within their jurisdictions.

Preservation laws allow historically or artistically important landmarks and buildings to be preserved for future generations. Zoning regulations allow for thoughtful growth by limiting some types of construction to certain areas for economic, aesthetic, and environmental reasons, among others. Building codes insure that homes and other buildings are safe for people to live and work in. These determinations are best made at the local level and § 301 recognizes that.

REGISTRATION

Just as with other works, authors of architectural works automatically have a copyright in their work. However, registration is necessary to bring an action for infringement. In addition, remedies such as damages and attorney's fees are unavailable without registration. Since the registration fee is only thirty dollars, it is well worth the cost to avoid having any possible infringement action dismissed for lack of registration.

Architectural works created on or after December 1, 1990 and works unconstructed and unpublished as of that date are eligible for protection. Aside from those structures noted above as ineligible for copyright protection, designs of buildings published and buildings constructed or published before the enactment date are ineligible for registration.

The term of protection for an architectural work created as a work for hire on or after December 1, 1990 lasts for 95 years from the date of publication or 120 years from the date of creation of unpublished plans. For an architectural work created on or after the enactment date and not as a work made for hire, the term of protection is life of the author plus 70 years.

CONCLUSION

The Architectural Works Copyright Protection Act is, for some authors of architectural works, an invaluable tool in protecting their reputation and livelihood. For architects that design highly visible works such as skyscrapers or museums, it is probably not necessary. People that invest hundreds of millions of dollars in a building that will be seen by everyone probably want that building to be a one of a kind original.

The AWCPA is probably more valuable to the architect that designs homes and other smaller projects. They are much easier to copy in the first place. The buyer probably is not as interested in buying a one of a kind, particularly since the typical modern subdivision has many copies of several basic designs. Of course, a copyright is kind of like a lock. It only keeps the honest people from stealing what is yours. At least now, the architect has some recourse when someone else profits off his idea.