

[Resource](#) > [Client information notes](#)

Copyright in architecture

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Building owners and those contemplating a building project frequently ask questions about copyright. The following are some of the most commonly asked questions with answers which are drawn from the Copyright Act 1968.

Can I copy a design I have seen elsewhere and ask my architect to redraw it?

No. Apart from wasting your architect's design skills that should be applied to the particular problems and advantages of your project, this would usually be a breach of the copyright of the original designer.

When I engage an architect to prepare a design for me, do I own the copyright?

Usually you do not. In nearly all cases, the architect will have combined your ideas with others and taken them to the stage where they amount to a 'work'. The author of the 'work' (the architect in this case) usually owns the copyright, although it can be assigned in writing and there are special provisions regarding works produced and under the direction of the Crown.

When I engage an architect, what rights do I have to reproduce the design, particularly in built form?

In nearly all cases, you would have an express or implied licence to build the building, once, on the land for which it is designed.

If the commission is for partial services and it is not the intention of the parties that the design should be built (for example, a scheme to show a purchaser what could be built on the land) but copyright has not been mentioned in the client-architect agreement, there might not be an implied licence to build.

Can I rebuild or repair a building without breaching the architect's copyright?

Yes. Section 73 of the Copyright Act 1968 permits the reconstruction of the building if the original construction was not in breach of copyright.

Can I extend a building in sympathy with the architect's design without breaching copyright?

It depends on the express and implied agreement between you and your architect. If this is what was contemplated when the architect was first engaged, and it was clearly understood that the architect would not necessarily be engaged to design the later stages, there is probably an implied licence to use the architect's copyright to the extent that it is necessary to ensure consistency, but in most other cases there would not be such a licence.

Any client intending to extend or otherwise alter a building should also be aware that the original architect may well have moral rights that need to be respected. In particular, altering a building is likely to infringe the moral rights of the original architect unless that architect has:

- been given notice of the proposed changes
- been given the opportunity to make a record of the work before it is altered
- been consulted in good faith about the proposed works

Am I entitled to have another architect finish the work if the first architect resigns?

Usually yes, but every case is different. Legal advice should be sought.

Am I entitled to have another architect finish the design work if I terminate the first architect's commission?

Usually yes, if termination is carried out in accordance with the Client and Architect Agreement. For example, the licence transfer is contingent upon payment of all outstanding fees. Legal advice should be sought.

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