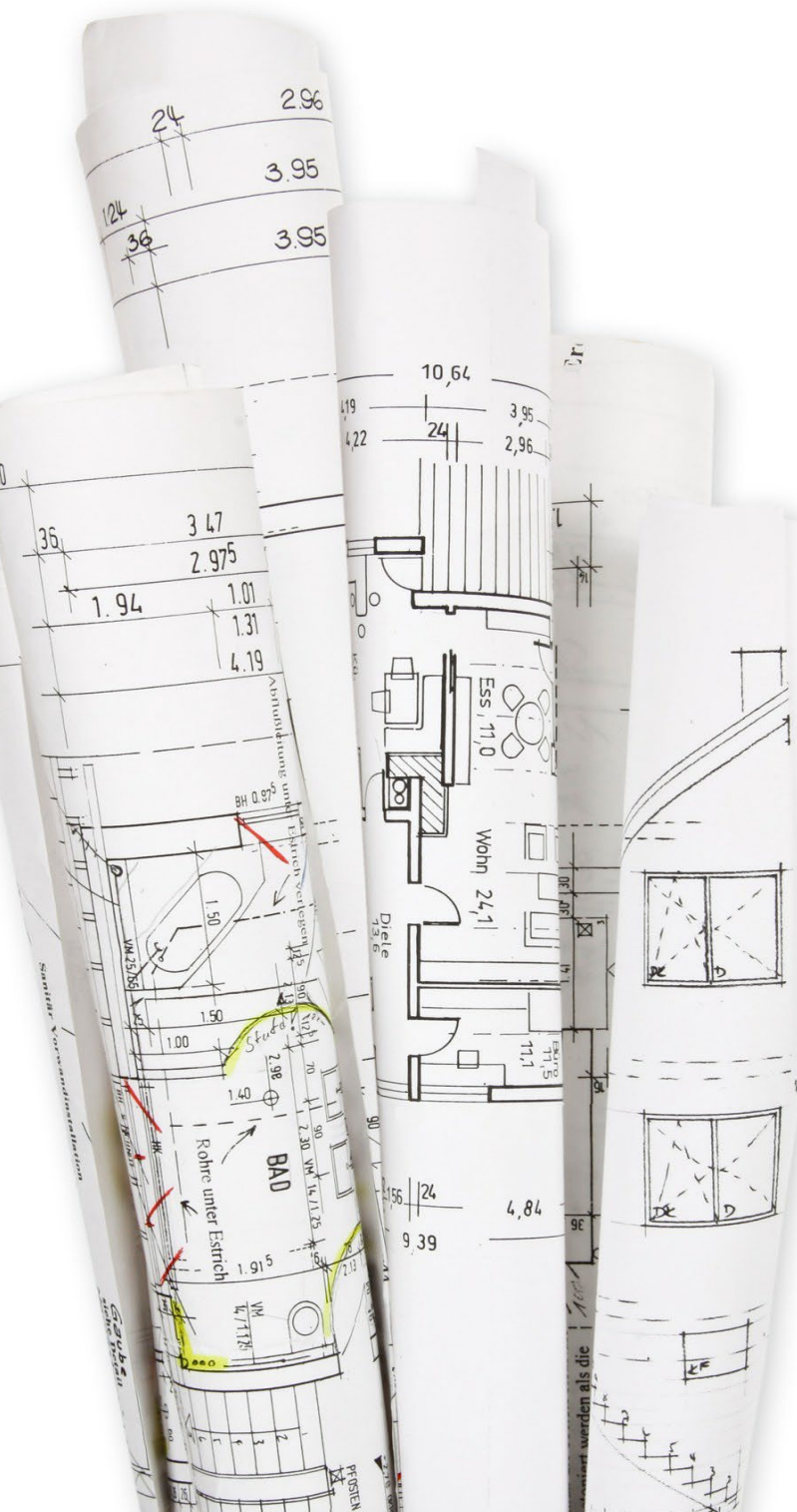


BUILDING BLOCKS

DESIGNPRO
INSURANCE GROUP
A Wichert Insurance Agency



Architects' & Engineers' Moral Rights are not What They Think They Are

By: *Eric O. Pempus, FAIA, Esq., NCARB*
DesignPro Insurance Group

Moral rights are personal rights that connect the creator, such as an architect or engineer (A/E), to documents that they created when rendering their professional services. Moral rights are about being properly named or credited when their work is used, and the way the work is treated and shown. When doing so, moral rights require that their name is always shown within their work. This is also called right of attribution.

IN THIS ISSUE:

FEATURED ARTICLE
CONTINUING EDUCATION
SOCIAL MEDIA
MEET OUR PEOPLE

The preserving of the integrity of the work allows the author to object to alteration, distortion, or mutilation of the work that is "prejudicial to the author's honor or reputation." Anything else that may detract from the artist's relationship with the work even after it leaves the artist's possession or ownership may bring these moral rights into play. Moral rights are distinct from any economic rights tied to copyrights. Even if an artist has assigned his or her copyright rights to a work to a third party, he or she still maintains the moral rights to the work.

Sundara Rajan, Mira T. (2006). *Copyright and Creative Freedom: A Study of Post-Socialist Law Reform*. Routledge Studies in International Law. Taylor & Francis. pp. 41–42. [ISBN 978-0-20396-776-8](https://doi.org/10.1080/10439862.2006.10555555).

How does this apply in architectural and engineering professional practice?

Professional association model agreements, such as authored by the American Institute of Architects (AIA) and the Engineers Joint Contract Documents Committee (EJCDC), between a design professional and their client (the project owner) specify that the A/E retains ownership of their documents. Nonetheless, these days there is almost unanimous shift by project owners to require that their A/E relinquish ownership of their documents.

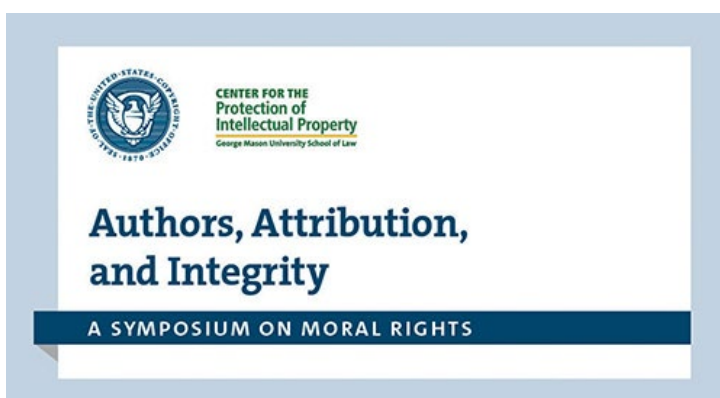
As an example, see an edited AIA Standard Form of Agreement Between Owner & Architect B101 (2017) edited by an owner's legal counsel.

~~§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. The Drawings and Specifications prepared by the Architect or its consultants are the Instruments of Service and the Owner shall be deemed to be the owner, and shall retain all common law, statutory, and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.~~

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner full ownership of the Architect's Instruments of Service ...

At times, the project owner (actually the owner's legal counsel) reaches further into their arsenal of onerous contract clauses and requires the design professional also relinquish their "moral rights."

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner full ownership and moral rights of the Architect's Instruments of Service ...



<https://www.copyright.gov/events/moralrights/>

A Symposium co-sponsored by The United States Copyright Office and The George Mason University School of Law and its Center for the Protection of Intellectual Property: This symposium began a conversation about the role of moral rights protection in the United States. This day-long event brought together authors, scholars, and other stakeholders for a broad discussion of copyright issues related to moral rights. Topics included the historical development of moral rights, the value that authors place on moral rights generally and individual moral rights specifically, the various ways these rights are provided for under current law, and new considerations for the digital age. Further study of moral rights under U.S. copyright law was among the recommendations made by the Register of Copyrights in testimony before Congress last spring and was requested by the Ranking Member of the House Judiciary Committee.

WHAT IS THE DIFFERENCE BETWEEN COPYRIGHTS AND MORAL RIGHTS?

While moral rights and copyrights both arise automatically from the creation of a work, it is important to be aware that copyright is separate and distinct from moral rights. A copyright is directed to the economic rights and commercial use of a work, and is grounded in the idea that the owner (who may not be the author) of a work should be able to capitalize on the work through publication and reproduction. In contrast, moral rights are a bundle of rights directed to the personal rights of an author (who may not be the copyright owner) with respect to the work, such as attribution and integrity.

The United States protects moral rights through the Visual Artists Rights Act of 1990 (VARA), which is very limited in scope as compared to moral rights protections granted in other countries. There are two types of moral rights that are recognized in the United States: the right of attribution, specifically to be credited as the author of the work and to disclaim works the author did not create; and the right of integrity, specifically to prevent distortion, mutilation, modification, and destruction of the work. Moral rights under VARA are effective for the duration of the life of the author, and can be waived, but cannot be assigned or licensed.

<https://www.amundsendavislaw.com/alert-MoralRightsConsiderationsforCompaniesintheUnitedStates>

IN CONCLUSION

Design professionals should push back on the over-reaching language to the detriment of their rights of attribution.

The July 2018 DesignPro Insurance Group's BUILDING BLOCKS risk management article titled "Ownership of Documents – What Your Client Expects" addresses the concerns of relinquishing ownership of design professionals' documents. See:

<https://www.designproins.com/blog/2024/07/pay-if-paid-vs-pay-when-paid-in-the-design-construction-industry>

About the Author of this Risk Management Building Block Article

As a risk manager for the last 18 years for the design profession, Eric has experience in professional liability insurance and claims, architecture, engineering, land use, law, and a unique background in the construction industry. Prior to risk management, he has 25 years of experience in the practice of architecture/engineering, and as an adjunct professor teaching professional practice courses at the undergraduate and graduate levels for the last 35 years at Kent State University's College of Architecture & Environmental Design.

As a Fellow of the American Institute of Architects and AIA National Ethics Council 2021 Chair, he has demonstrated his impact on architectural profession. He has presented numerous loss prevention and

continuing educational programs to design professionals since 2000 on topics of ethics, contracts, and professional practice in various venues across the United States and Canada. He is a former member and chair of his city's Board of Zoning & Building Appeals for 24 years, and is a licensed architect, attorney, and property & casualty insurance professional.

His educational background includes a JD from Southwestern University School of Law, Los Angeles; Master of Science in Architecture from University of Cincinnati; and BA in psychology/architecture from Miami University, Oxford, Ohio.

The above comments are based upon DesignPro Insurance Group's experience with Risk Management Loss Prevention activities and should not be construed to represent a determination of legal issues but are offered for general guidance with respect to your own risk management and loss prevention. The above comments do not replace your need for you to rely on your counsel for advice and a legal review, since every project and circumstance differs from every other set of facts.

Disclaimer: The viewpoints expressed in this article are those of the author(s) and are not necessarily approved by, reflective of or edited by other individuals, groups, or institutions. This article is an expression by the author(s) to generate discussion and interest in this topic.

MARK YOUR
CALENDARS
FOR ERIC'S
UPCOMING



CONTINUING EDUCATION PROGRAMS:

Speaking Engagements:



September 15 - 17, 2024, Bridge Park in Dublin, Ohio

Intersecting Conflicts: A Fiduciary Duty to a Client & Your Duty to the Public's HSW
Monday, Sept. 16, from 8:00-9:00 a.m.

GET TO KNOW US ON SOCIAL MEDIA



Get the latest updates from DesignPro by following us on social media!

Visit the DesignPro Website at: www.designproins.com

Visit the Wichert Website at: www.wichert.com

Follow DesignPro on Twitter at: [@DesignPro_Insurance](https://twitter.com/DesignPro_Insurance)

Follow Eric Pempus on LinkedIn at: [eric-o-pempus-esq-faia](https://www.linkedin.com/in/eric-o-pempus-esq-faia)

Follow Brad Bush on LinkedIn at: [brad-bush-a2a0136](https://www.linkedin.com/in/brad-bush-a2a0136)

Follow Wichert Insurance on Facebook at: facebook.com/wichertins

Follow Wichert Insurance on Twitter at: [@Wichert_Insurance](https://twitter.com/Wichert_Insurance)

MEET OUR PEOPLE:



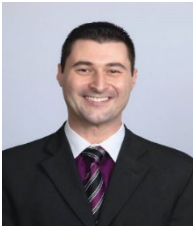
Brad Bush, CPCU, AU
Principal
brad.designproins@wichert.com



Eric Pempus
FAIA, Esq., NCARB
Risk Manager
eric.designproins@wichert.com



Connor Bush
Account Executive
connor.bush@wichert.com



Chuck Petretti
Account Executive
chuck.petretti@wichert.com



Roger Perry
Account Executive
roger.designproins@wichert.com



Tracey Heise
Account Manager
tracey.designproins@wichert.com



Tracy Combs
Risk Manager & Loss Control Specialist
tracy@wichert.com

DesignPro Insurance

5991 Chandler Court, Suite A
Westerville, OH 43082
614-794-4820

www.designproins.com

2301 Blake Street, Suite 100
Denver, CO 80205
614-426-3045