

Bad Things Can Happen When Contractors Change Professional Plans

Ronald C. Beach, Esq.
Folk & Associates, P.C.

Successful completion of a construction project obviously involves the cooperation of a number of individuals from various disciplines: owner/developers, architects and engineers, general contractors and various subcontractors. Coordination of such individuals or entities requires constant communication, organization and, of course, a considerable amount of patience and attention to detail to see the project through fruition.

When parties to the construction process fail to coordinate changes, even minor changes, to the plans with the design professional that originally drew, stamped and certified that portion of the plans, liability may ensue.

Design professionals create their work from years of education, experience and skill. Their plans inevitably will require changes as the project progresses. Those changes may come from the owner/developer, architect, city inspector or perhaps the general contractor. It is essential that those associated with the project, especially those professionals that contractually bind themselves with other inter-disciplinary professionals, make absolutely certain such changes are made only by the appropriate professional and re-stamped using only that professional's designation. Failure to have the proper professional re-stamp changes can also expose inattentive or inadvertent parties to copyright and trademark infringement, in addition to creating a potential defense for that professional in subsequent construction defect litigation involving the changes.

For example, under the Copyright Act of 1976, Congress gave the author of exclusive works (copyrights) a federal cause of action against those misappropriating their works. See, 17 U.S.C. § 301, et seq. Furthermore, the common law tort of commercial misappropriation may apply. It involves: (1) the unfair taking (2) for profit (3) at little or no cost (4) of property acquired by another through substantial time and money. See, *Fairway Constructors Inc. v. Ahem*, 193 Ariz. 122, 970 P.2d 954 (App. 1998). Finally, a professional stamp may also receive protection under the Lanham Act, which protects the original author's stamp from false designation of origin or deception by others as to the true owner when that stamp is used in commerce. See, 15 U.S.C. §1125(a).

The contractor who tries to save time and money by making changes, even very small changes, without involving the appropriate design professional, runs the risk of liability for copyright and Lanham Act violations, unless the design professional re-stamps the plans after all of such changes have been made. To do otherwise is a shortcut that is simply not worth the risk.

ABA LEGAL NOTES

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ABA LEGAL COUNSEL

Debra Drecksel, Esq.
Dyer & Butler, LLP
Fennemore Craig, PC
Horn, Ducar, Lorona
Howard & Rouse
Jennings, Haug & Cunningham
Jennings, Strauss & Salmon, PLC
Snell & Wilmer, LLP

Folk & Associates, PC
Greenberg Traurig, LLP
Holden Brockelman, PLC
Lewis and Roca, LLP
Mesch, Clark & Rothschild, PC
Jones, Skelton & Hochuli
Slayton LLP

Mariscal, Weeks, Mcintyre & Friedlander