

## Copyrighting Architectural Drawings: An Issue for Builders, Developers, and Lenders

McGlinchey Real Estate and Intellectual Property Alert

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The U.S. Copyright Office has proposed new rules requiring electronic registration of copyrights in architectural works. The proposal will be published December 26, 2018 and the comment period is 45 days from publication. View a pre-release of the proposal here: <http://bit.ly/2BxxdeY>

Despite the wording of the rules, the Copyright Office acknowledges that it has been accepting electronic filings of such applications since 2008.

Those who develop or finance real estate projects need to take into account the copyrights that exist in the work product of subcontracted professionals, including architects, designers, and similar independent contractors. Financiers conducting due diligence will want contractual clarity regarding the rights and obligations of the developers in the building design during and after construction.

A tension may arise between the developer's desire to own all rights in the drawings and associated copyrights in the building designs on a given project, and the architect's desire to retain continuing control over the drawings and associated copyrights, both during and after the project. Careful negotiation of these issues in advance will avoid later disputes. A failure to specifically deal with this in a contract may mean that the owner or developer obtains only a license to use the ultimate design in building a structure, while ownership of the drawings and associated copyrights will be retained by the architect or designer.

For more information on this and other real estate and copyright issues, contact McGlinchey Stafford's Real Estate and IP Teams.