

Construction Law in North Carolina

Melissa Dewey Brumback
2840 Plaza Place, Suite 400
Raleigh, NC 27612

Phone: (919) 881-2214
Fax: (919) 783-8991
Email: mbrumback@rl-law.com
Website: constructionlawNC.com

Copyright Protection under ConsensusDOCS and AIA—which is better? (Law note)

October 6, 2011 by Melissa Brumback



Which [standard form contract](#) provides “better” protection for copyright issues- ConsensusDOCS or AIA? The ever-so-hepful “it depends” is, as usual, the answer.

Are you the owner looking to use the plans you paid for even after you terminate an architect, or are you the architect looking to protect your work product? If you are the owner, you will probably prefer ConsensusDOCS. If you are the architect, your best bet is still the AIA documents.

Consider the following:

Under ConsensusDOCS 240,

- the Owner receives ownership (except copyrights) of all documents, drawings, and data prepared by the architect or consultants for the Project, upon final payment for all sums due in the event of termination (Article 10.1).
- the Owner has the **option of being granted copyright** ownership, contingent on making all payments required, including a stated copyright fee. (Article 10.1.1).
- **whether termination is for convenience or for cause by either party**, the Owner can use the documents to complete the project, provided he pays all sums due (Article 10.1.2).

Construction Law in North Carolina

Melissa Dewey Brumback
2840 Plaza Place, Suite 400
Raleigh, NC 27612

Phone: (919) 881-2214
Fax: (919) 783-8991
Email: mbrumback@rl-law.com
Website: constructionlawNC.com

- the Owner **agrees to indemnify the architect** for post-construction use of documents. (Article 10.1.3).

Under AIA B101,

- the architect and consultants are the owners of their respective instruments of service, retaining all rights, including copyrights (Article 7.2).
- the Owner is granted a **non-exclusive license in the instruments of service, solely for use in** constructing, using, maintaining, altering and adding to **the Project**, provided the owner substantially performs, including making prompt payments of **all sums due** (Article 7.3).
- if the Owner does not pay all sums due, if the architect terminates the contract for cause, or if the Owner does not pay an extra fee after a termination for convenience, **the Owner's non-exclusive license terminates**. (Article 7.3; Article 11.9).
- the Owner **must indemnify** the architect against third party claims arising **from the owner's unauthorized use** of documents. (Article 7.3.1).
- if the Owner **properly terminates the architect for cause, there is no indemnity** against third party claims and no release of the architect from the owner's claims arising from the use of the documents (Article 7.3.1).

Do you have experience in managing copyright issues under either contract? Which do you prefer? Leave your thoughts in the comments section, below.

Next week, I'll address copyright issues in non-standard construction contracts, including letter proposals.

Photo [\(c\) Horia Varlan](#) via Creative Commons license.

This document is intended for general informational purposes only and does not provide any legal advice nor create any attorney-client relationship.

Statutes and case law vary from jurisdiction to jurisdiction. Information presented here may not be applicable to any individual situation. You should consult a licensed attorney in your jurisdiction for legal advice relating to your specific situation.

The opinions expressed herein are those of the author and not of Ragsdale Liggett PLLC.

All material in this blog copyright 2009-2011.