

JULY 2018

# BUILDING BLOCKS

**DESIGNPRO**  
**INSURANCE GROUP**  
*A Wichert Insurance Agency*

## OWNERSHIP OF DOCUMENTS – WHAT YOUR CLIENT EXPECTS

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 DESIGN PRO INSURANCE GROUP

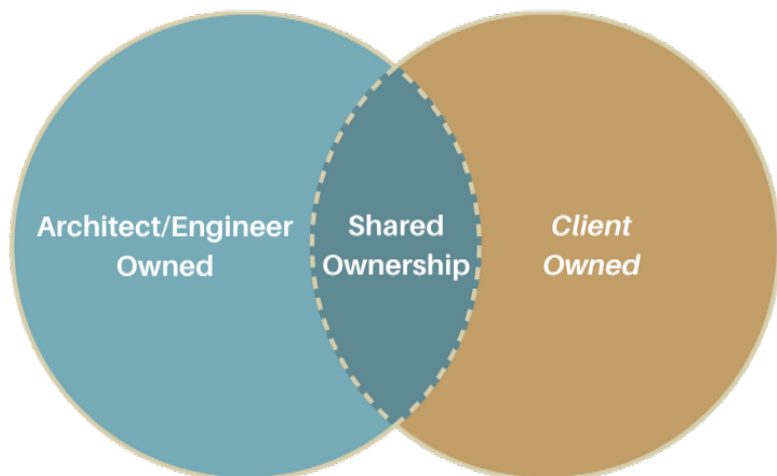
**DRAWINGS, SPECIFICATIONS, REPORTS,** and other documents produced by design professionals are instruments of their professional service, not products. By analogy, my dentist's dental tools do not become my property after my last examination - they are his or her instruments of service. Sometimes an A/E's client may insist on owning or having an unlimited license to use the documents. If the design professional can identify the client's specific needs for the instruments of service (e.g., construction, occupancy or maintenance), a limited license can be granted by the A/E to satisfy their needs.

However, if the client insists on owning or having an unlimited license, and the design professional is willing to acquiesce to this demand, the client should be

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required to hold harmless and indemnify the design professional for all liability, cost, and expenses incurred as a result of any modification or use of the instruments of service (such as on another project) without the design professional's written authorization.

This risk manager's experience has been over time, the instance of ownership of the A/E's documents has become almost expected in owner-driven agreements, or modified model association agreements of the AIA and EJCDC. Consider the following, modified to suit your situation.

### SAMPLE PROVISION

The standard and non-standard portions of the Project-specific construction documents prepared or furnished by the A/E and the A/E's consultants related to this Project, pursuant to this Agreement, are instruments of the A/E's and the A/E's consultants' professional services (the "Construction Documents"). The A/E's and A/E's Consultant's standard details, specifications and designs shall remain the property of the A/E. However, the Construction Documents shall become the property of the Owner upon payment in full of all fees and expenses incurred by the A/E under this Agreement, and any modifications to this Agreement.

Furthermore, the Owner may use the Construction Documents only for construction, occupying, maintenance or additions to this Project only, and the Owner may not make any modifications to or use the Construction Documents for any other project, and shall be the Owner's sole risk, without the written permission of the A/E. The transfer of ownership of the Construction Documents to the Owner is not to be construed to be a sale by the A/E or the A/E's consultants. Therefore, the A/E and the A/E's consultants make no guarantees, certifications or warranties, either expressed or implied warranty of merchantability and fitness for any particular use of the Construction Documents. This transfer of ownership of the Construction Documents is not a waiver of the A/E's and the A/E's consultant's other rights under law and this Agreement.

Lastly, the Owner agrees, to the fullest extent permitted by law, to indemnify, hold harmless and defend the A/E, its officers, directors, employees, representatives, agents and the A/E's consultants from and against any claims, allegations, losses, damages, liabilities or costs, including attorneys' fees, expert witness fees and costs, and any other defense costs, arising from or allegedly arising from in any way related to the unauthorized reuse or modification of the Construction Documents by the Owner, including any other person that uses the Construction Documents from or acting through the Owner.

### MANAGING YOUR EXPOSURES AND RISKS

Negotiate the ownership provisions of your agreements that fit your situation, and do not be surprised if your client expects to own your documents. Design professionals must protect their best interests by controlling their exposures and risks associated with the misuse of the project construction documents. And do not be surprised if you are a Consultant to the Prime Professional on a project, where the Prime Professional has already given up ownership of their documents without the safeguards suggested above. That Prime Professional will expect you as a Consultant to also relinquish your documents without such risk management measures in place.

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**About the Author**

*Eric O. Pempus, FAIA, Esq., NCARB, ORSA has been a risk manager for the last 12 years with experience in architecture, law and professional liability insurance, and a unique and well-rounded background in the construction industry. He has 25 years of experience in the practice of architecture, and as an adjunct professor teaching professional practice courses at the undergraduate and graduate levels for the last 30 years. As a Fellow of the American Institute of Architects and a member of the AIA National Ethics Council, he has demonstrated his impact on architectural profession. He has presented numerous loss prevention and continuing educational programs to design professionals and architectural students in various venues across the United States and Canada.*

**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 individual, group, or institution. This article is an expression by the author(s) to generate discussion and interest in this topic.*

*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.*

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# DON'T MISS ONE OF ERIC'S UPCOMING SPEAKING ENGAGEMENTS!

Mark your calendars for Eric's upcoming Continuing Education Programs:

## **Webinars:**

### **Cleveland Engineering Society**

June 27, 2018 – 11:30 a.m. to 12:30 p.m. 1 Credit Hour

Topic: Project Delivery Methods for Engineers / Understanding How the Methods Differ

### **Cleveland Engineering Society**

November 28, 2018 – 11:30 a.m. to 12:30 p.m. 1 Credit Hour

Topic: Ethics in the Practice of Engineering, Part II

## **Conference Seminars:**

### **AIA Columbus**

*50 W. Town Street*

*Columbus, OH 43215*

July 20, 2018 – 12:00 p.m. to 2:00 p.m. 2 Credit Hours

Topic: MBA Session: Professional Liability Insurance Case Study – School Project

HSW Approved

### **AIA Ohio Toledo Convention**

*Renaissance Toledo Downtown Hotel*

*444 North Summit Street*

*Toledo, OH 43604*

October 5, 2018 – 8:00 a.m. to 9:00 a.m. 1 Credit Hour

Topic: Small A/E Firm Practice & Risk Management, for the Small Firm

HSW Pending

October 5, 2018 – 10:45 a.m. to 12:15 p.m. 1½ Credit Hours

Topic: The Good, Bad, & Ugly in Construction Administration-Shop Drawings, RFI's & Change Orders in the Various Project Delivery Methods

HSW Approved

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# THE FINISHED PROJECT

PICTURES AND STORIES OF OUR CUSTOMER'S PROJECTS

Do you have a completed project that proved to be challenging, exciting, unique, or has a special story behind it? If so, now is your time to share your story!

If you would like your project highlighted in our newsletter, please submit a brief summary and several photos to:

[brad.designproins@wichert.com](mailto:brad.designproins@wichert.com)

FUN  
FACT:

$\pi$  3.14159265359

In 1897, Indiana state legislators tried to pass a bill that would have legally redefined the value of pi as 3.2. The new math died a quiet legislative death.

A large, bold, black pi symbol ( $\pi$ ) centered on the page.

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# MEET OUR PEOPLE:



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