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Information Sheet - ACCESS TO ELECTRONIC FILES

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The Board often receives enquiries from home owners who wish to access the electronic files related to their project from their architect. This can be for a range of reasons. In some cases, home owners may want to provide a builder with drawings, or because architectural services have been completed with further modifications now needed. This information sheet outlines the Board's view on how parties can best approach the issue of access to electronic (CAD) files.

A practical approach

A home owner sometimes seeks copies of electronic files used to design a home after the architectural services are complete - or the services of the architect have been terminated. Unless the client-architect agreement makes specific reference to the provision of editable files, the Board's position is that there is no obligation for the architect to provide CAD files.

However, in practice there may be instances when a home owner may wish for a person to access and modify CAD files that have been prepared by the architect. This may be because a home owner may wish to use another architect to commence the next phase of work, or may wish to provide a builder with a copy of the files prior to commencing on site.

In these instances, the Board advises the home owner and architect to negotiate copies to be provided on the following basis:

1. Access to CAD files requires work by the architect to remove redundant layers or superseded options, and to compress the large files for ease of opening. The time spent to prepare the files for issue should be recognised with reasonable terms of payment for time spent and costs incurred, in addition to fees already paid to the architect
2. For reasons outlined above, care should be taken to avoid being caught up in a dispute about modifications to CAD files. One practical step may be that in addition to the CAD version of the files, that the client be given pdf versions of the files with an acknowledgement that this is the form of design being provided to the client by the architect (so that there can be no argument later about the version of the CAD files that was distributed to the home owner). Alternatively, before the CAD version files leave the architect's premises, the home owner should review the CAD and pdf versions of the files in situ and acknowledge the pdf and CAD

versions being provided to the home owner are the same.

3. The home owner should provide the architect with an acknowledgment and waiver - acknowledging that the documents only represent work completed to a particular phase, that they may only be used for the purpose for which they are intended having regard to the particular phase of work completed, that any modifications made to the files thereafter are not the architect's responsibility but are the home owner's responsibility, including those the home owner has provided the files to e.g. a builder or other architect or designer. In the event the architect's work is incomplete on a phase the home owner should also acknowledge the work is incomplete. A waiver should be obtained that reflects all the above matters.

Many client-architect agreements make clear that a home owner will be given copies of all drawings and illustrations required to approve the design or layout, negotiate with a local Council or select a builder. Some agreements will make it clear that copies include electronic files.

Many home owners assume that the fees paid to their architect includes access to all the files associated with preparing the drawings required for Development Application, tendering or similar. This is generally not the case.

When working with an architect, the usual contractual arrangement provides that a home owner secures the licence to use the design on the site for which it was prepared. But that doesn't mean an owner secures all the tools used to create the design.

Think of it like commissioning a statue from a sculptor. The 'client' enjoys the final statue - not the foundry or mold that was used to create it. A builder completes a home, but doesn't surrender all the power tools used to build it.

So in considering what a home owner can expect to have access to, we need to consider three important questions:

1. How should we define what 'documents' or files are owed to the home owner as part of the architectural services?
2. What are the statutory legal considerations?
3. What are the practical measures home owners and their architects might consider when seeking access to electronic, editable files?



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'Documents' have traditionally been in hardcopy form – paper copies that allow architects to convey ideas to their clients, or to the builder, or allow the builder to convey the scope to their subcontractors.

What are electronic files?

Electronic files can refer to any digital format that is readable on a computer. This can include PDF, JPG, TIFF, DWG, DXF and more. In broad terms, files fall into two categories;

Raster-based files

PDF, JPG and TIFF are image-based - frozen like a photograph. These files are common in photoshop and illustration-based programs, or as an option to save from Word or similar. As 'picture files' they can't be used to derive measurements, or easily edit.

Vector-based files

DWG, DXF and the like can be used to derive accurate measurements. This makes them valuable to architects when refining a design or documenting the project for local council or builder.

Architects use complex, specialised software to evaluate a range of design options suited to the site, to achieve the client's brief and comply with the local authority's requirements. The most common vector-based files used by architects are CAD files (Computer Aided Design). CAD is a vector-based drawing application that allows users to take detailed measurements. Increasingly builders and their suppliers use CAD drawings to size, cut and deliver components to site.



Statutory legal considerations

Part 3, s12 of the NSW Architects Code of Professional Conduct (the 'Code') states that;

(1) If a client of an architect provides the architect with reasonable notice of the client's wish to inspect documents and records relating to the provision of an architectural service, the architect should (where practicable and during normal business hours) provide the client with a reasonable opportunity:

(a) to inspect:

(i) documents produced in providing the architectural service, and

(ii) records (except confidential business records) relating to the provision of the service, and

(b) to make copies (at the client's expense) of any such documents or records.

(2) An architect should not unreasonably refuse to provide a client with an opportunity to inspect or copy the documents or records referred to in subclause (1).

(3) Nothing in this clause derogates from any right of an architect to claim a lien over documents or records referred to in subclause

(1) or to assert any intellectual property rights in respect of such documents or records of any such documents or records.

The Code provides for the clients of architects to inspect, and copy, documents or records. The Code defines documents as;

any record of information, and includes:

(a) anything on which there is writing, or

(b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them, or

(c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else, or

(d) a map, plan, drawing or photograph.

The Code suggests that an architect, with reasonable notice, should make copies of electronic files available to their client. However, the Code does not specify whether electronic documents need to be provided in vector based form as opposed to raster base. In the Board's view, an architect discharges his/ her obligation if they provide documents to a client in raster base form i.e. in PDF or similar uneditable format. It is advisable for these files to be provided in PDF or a similar uneditable format until the project is complete.

This is for two reasons;

- 1. purchasing CAD based software generally requires a licence. This gives rise to licensing issues. Moreover, to use the software in an informed way can be costly and require specialised training - in other words it is not without practical difficulties in providing a client with an editable form of a document.**
- 2. in the event that files are edited, this gives rise to a whole range of risks including inadvertent modifications that may breach the terms of a Council's Development Consent, or the terms of a builder's contract price. If many versions of the same drawing are circulating, it can cause confusion and have serious cost implications for the home owner. This would oblige an architect to put in place risk aversion control measures which would be an undesirable burden and cannot guarantee against inadvertence.**

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The Code does not expressly deal with an architect's duty to make copies of electronic files available to the client once the client terminates the services of the architect. i.e. when the home owner is no longer a client.

There is an argument that the Code implies the architect has no obligation to provide the opportunity to inspect or copy the documents or records.

However, there is also an argument that if a client has paid for services up to the point of termination, that the client is as a matter of contract entitled to the fruits of that work in the sense of at least obtaining PDF or a similar un-editable electronic copies of the documents representing work paid for.

We do not propose to resolve the competing considerations here. Instead, the Board offers some practical observations for when a request to access editable, electronic files is made after termination of an architect's services.

You should consult a lawyer for appropriate words to reflect the above.

Finally, you should complete a thorough check before passing the files on to another party, such as a builder or another architect, in case an issue arises in the future.

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