

Designworks Homes, Inc. v. Columbia House of Brokers Realty, Inc.

September 2022

In light of the recent decision in the Designworks floorplan litigation, below is an update on the current status of the lawsuit.

Litigation Background: Two Missouri real estate brokerages were sued by an original architect of homes after the brokerages created and included floorplans in the homes' listing content. After an [adverse decision](#) out of the U.S. Court of Appeals for the Eighth Circuit, defendant Brokerages' [appealed](#) to the U.S. Supreme Court seeking to address the novel question of whether the creation of floorplans infringe the original architect's copyright in the home's original design. NAR, along with 17 other organizations, submitted an [amicus brief](#) in support of the petition.

On June 27, 2022, and with a lack of a circuit court split, the U.S. Supreme Court denied the defendant Brokerages' petition for writ of certiorari to review the Eighth Circuit's holding that the district court erred in holding that the *Copyright Act* Section 120(a) provides a defense to the infringement claim against the defendant brokerages for the use of the floorplans. Section 120(a) states the making and distribution of "pictures, paintings, photographs or other pictorial representations" of architectural works is not an infringement of the original designer's copyright, but the court held against the Brokerages' application of the exemption for the recreated floorplans.

The cases were remanded back to the District Court of the Western District of Missouri. The parties recently concluded the briefing where the defendant brokerages argue that the "fair use" defense applies to its use of the floorplans. The court's decision is expected in the next 1-2 months, and will hinge on the balancing of the four factors regarding the application of fair use:

- (1) the character of use including whether commercial or nonprofit educational;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used; and,
- (4) the effect on the potential market for or value of the copyrighted work.

Guidance: NAR strongly disagrees with the decision and analysis in the Designworks case and believes that the Eighth Circuit erred in holding that use of independent renderings of floorplans is not exempted use under the US Copyright Act. The Eight Circuit's decision is binding only on the states in its circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota). We are confident that the District Court will find that the use of the floorplans qualifies as fair use and will rule in favor of the brokerage defendants in Designworks. NAR will continue its efforts to ensure that independent renderings of floorplans can be used by REALTORS®, homeowners, and others for important purposes such as appraisals, renovations, and home sales without the fear of copyright infringement.

For the latest information, stay tuned to [NAR.REALTOR](#).

