



The Business of Art

Every true artist I know has no choice; discussions initiated by disapproving parents or a spouse re “How long are you going to try to make a living this way?” are futile. A visual artist has to paint or sculpt, mold, print, etc., as the case may be, the same way they have to breathe. There can be a choice, however, between poverty and financial security. The artist’s knowledge of the different negotiable points in contracts forged with collectors, dealers, agents, exhibitors and others can make the difference between dying like a Van Gogh and living like a Picasso.

For the sale of original art, there are a number of different types of contracts. A **Bill of Sale** contains basic contractual terms: the artist’s name, date, title, description of the piece, price, sales tax due and payment terms. A **Commission Agreement** should serve to clearly protect the artist’s copyright rights in the work and should compensate the artist for cost of materials and expenditure of time. This kind of contract should state when and how much the artist will be paid and should be signed by all parties before the artist begins work. For sales by galleries and agents, there can be an **Artist-Gallery Consignment Agreement**, an **Artist-Gallery Agreement** or a **Representative (Art Dealer) Agreement**.

An Artist-Gallery Consignment Agreement is the document most commonly used. It provides that all works of art continue to be owned by the artist with the gallery acting as an agent who receives proceeds of any sales in trust. All consigned work should be accurately listed along with clear text regarding the gallery’s commission and deductible expenses. Expectations with respect to any reception or promotional obligations of the gallery (and anticipated costs) should also be identified. An Artist-Gallery Agreement provides for the outright purchase of a piece of work by a gallery and the resale of that work at a sale price that should be mutually agreed upon. This contract should clearly establish the artist’s retention of all copyrights or limitation to be placed upon such rights. And, a Representative (Art Dealer) Agreement is commonly used when an artist seeks sale of art which is not represented by a gallery with a full description of the specific items, duration and commission structure of such an arrangement. All three contracts should include the artist’s audit rights to the books and records of the gallery or dealer to be sure the calculations of net sums due are accurate.

Being a starving artist is hugely overrated. Never be afraid to insist upon getting the protections you need in writing.

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