



Lawyers for the
Creative Arts

Nourishing the Creative Spark![®]

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Illinois Consignment of Art Act:

I. Introduction

The Illinois Consignment of Art Act (815 I.L.C.S.) was passed in 1985. The Act was a response to a rash of gallery bankruptcies in the early 80s leaving artists without any way to retrieve their work. More generally, the Act also sought to address the unequal bargaining positions of dealers and artists, and to protect artists from dealers who would seek to take advantage of that situation. The Act requires that the dealer enter into a written agreement with the artist and states four terms that must be included in that agreement. The Act further protects the artist against dealer bankruptcy and loss, theft, or destruction of the work while in the dealer's possession.

II. Definitions

A. Who is an "Artist" under the Act?

The Act defines an artist as the creator of the work of art. If the creator is deceased, then the artist's rights under the act are transferred to the artist's heirs, legatee's or personal representatives. The Act does not cover a subsequent owner of the piece of art who later wishes to resell it.

B. Who is a "Dealer" under the Act?

The Act defines a dealer as a person engaged in the business of selling fine art. The Act does not apply to persons who are exclusively engaged in the sale of goods at public auction. Furthermore, a Chicago Municipal Court case refusing to apply the Act in the case of a restaurant owner selling art hanging in

his restaurant suggests that the Act may apply only to those who are primarily engaged in the business of selling art.

C. What is “Art” under the Act?

The Act defines “fine art” broadly so as to include almost any visual work. The Act specifically includes the following as being “fine art”: (1) a visual rendition including, but limited to, a painting, drawing, sculpture, mosaic, videotape, or photograph; (2) a work of calligraphy; (3) a work of graphic art including, but not limited to, an etching, lithograph, serigraph, or offset print; (4) a craft work in materials including, but not limited to, clay, textile, fiber, wood, metal, plastic, or glass; (5) a work in mixed media including, but not limited to, a collage, assemblage, or work consisting of any combination of the works described in (1) through (4).

III. When the Act applies

The Illinois Consignment of Art Act applies when an artist delivers a work of art to an art dealer to be sold or exhibited for a commission. Because the act applies when art is sold or exhibited “for commission,” any art on exhibition only will not be covered by the Act. This is true even if other pieces of work by the same artist and/or in the same gallery are for sale on commission. In other words, application of the Act would be on a piece by piece basis. The Act also does not apply when a dealer or gallery buys a piece from the artist outright and the artist is fully compensated up front.

IV. What is required by the Act?

A. Dealers must enter into Written Agreement

The Act requires that dealers enter into a written agreement with artists prior to or within seven days after art work is delivered to be sold on commission. The Act sets out four provisions that must be included in those written agreements. Provisions required by the Act are as follows: (a) the value of the work; (b) the time within which the proceeds of the sale are to be paid to the artist upon sale of the work; (c) the commission the dealer is to receive upon sale of the work; (d) the minimum sale price of the work and any discounts given by the dealer in his regular course of business.

A Dealer will be in violation of the Act if he/she fails to enter into a sufficient written agreement. Any agreement that does not include one or more of the required provisions would be in violation of the Act. Any portion of an agreement waiving any of the required provisions will be considered void. Violation of the Act will subject the Dealer to sanctions (discussed below).

The Act allows a Dealer to use, display, or photograph the work as long as the artist’s name accompanies the work. This eliminates the need to include a provision in the agreement and/or separate agreements addressing the issue.

The Act contains a default payment schedule that may be altered by clear and conspicuous provision in the written agreement. The Act's payment schedule calls for the Artist to be paid within thirty days after the proceeds are received by the dealer. In the event of a deposit

B. Dealers are Strictly Liable

Under the Act a dealer will be held strictly liable for damage to or loss of the work. Liability attaches upon delivery, and continues for thirty days after the contractual removal date. Absent a date for removal in the written agreement, liability extends thirty days after the dealer sends written notice requesting removal. Thus, the artist is not required to prove negligence on the part of the dealer to receive compensation.

V. What is not required by the Act?

A. Insurance not Required

The Act does not require dealers to insure all works in their possession. Artists must independently inquire about insurance coverage for each gallery. Furthermore, artists should discover the limits of their own homeowners or renters insurance.

B. Notice not Required

Prior to the Act the Uniform Commercial Code (U.C.C.) required dealers to give notice identifying items on consignment in order to protect such items from the dealer's creditors. The Act now automatically protects works on consignment from the dealer's creditors and supersedes the U.C.C. provision requiring notice.

VI. The Effect of Bankruptcy

Under the Act works held on consignment are considered trust property. Because the works and their proceeds are held in trust by the dealer for the artist, they should not be subject to claims by the dealer's creditors. The Act is state law, however, and bankruptcy is a federal action. Once a dealer declares bankruptcy all of his assets will be frozen; this includes works and/or proceeds held in trust. The artist must then file a petition to retrieve his artwork or proceeds. This petition may argue that under the Act the artwork or proceeds are trust property as the Bankruptcy Court often looks to state law in determining status of property. This method has not been

VII. Damages

A. With a Written Agreement

An artist is limited to recovery of the amount the artist would have received had the piece been sold. If there is no formal contract, the amount of recovery will be determined by a written consignment list. This should provide an incentive to artists to keep consignment list information current. If there is absolutely no documentation of value then

B. Without a Written Agreement

Without any written agreement as to the value of pieces on consignment, recovery is based on the fair market value of the piece. Because of the variable nature of artistic value, courts often rely on the dealer's judgment in these circumstances. This of course puts the artist at a great disadvantage when looking to recover from the dealer. Even if the case of fair market value, the amount of recovery for the artist will be reduced by the dealer's commission.

VIII. Penalties for Violation

If a dealer violates the Act by not entering into a sufficient written agreement prior to or within seven days of delivery of the work being placed on consignment, then he may be subject to penalties. If a dealer is found to be in violation of the Act, the artist may be freed of his obligations to the dealer (including commission) by the court. Furthermore, the dealer will be liable for actual, incidental and consequential damages arising from the violation plus \$50 and attorney's fees. Actual damages are generally damage to the artwork; incidental damages include costs of contract breach such as storage costs; and consequential damage may include damage to reputation or earning potential.

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