

Florida's Artist's Consignment Act: What Does it Protect?

by Erica Cañas

Surprising to many, Florida law provides some specific means for protecting artists' rights and property. For instance, the Artist's Consignment Act, *Fla. Stat.* §§ 686.501-686.506, contains a handful of laws that directly address, and govern, the relationship between artists and art dealers.

Artist's Consignment Act

The Artist's Consignment Act (the "Act") provides that whenever an artist (or "consignor") delivers a work of art to an art dealer (or "consignee") for the purpose of sale, or exhibition and sale, the delivery and acceptance thereof by the art dealer creates a "consignment contract." As such, any proceeds from the sale of the work of art are considered "held in trust" for the benefit of the artist, and are to be applied to any payment due to the artist first. This means that, regardless of whether the dealer physically has obtained proceeds from the sale of the work, the law will hold the dealer as if he had, and the dealer will remain liable to the artist for the specified amount. Importantly, these two rights cannot be waived in writing by the artist!*

The Consignment Contract

The Act also provides that the consignment contract must include the following terms:

- The proceeds of the sale of the art work are to be delivered to the artist at a schedule agreed upon by the artist and dealer;
- The art dealer is responsible for the stated value of the work if the work is damaged while in the art dealer's possession;
- The art dealer cannot sell the work for less than what the artist and art dealer previously agreed upon; and
- The artist has a priority interest in the works, or in the proceeds of the work, over the claims of the art dealer's creditors.

Caution - Protection is Not Automatic†

The Act defines "art dealer" as a person who is "engaged in the business of selling works of art," and has been found to exclude persons or entities that may be engaged in

* Violations of these provisions will be considered a misdemeanor of the second degree.

†Also, keep in mind that the Act does not apply to works of art worth less than \$100.00.

other activities, such as selling antiques as well. In situations where the art dealer does not fall within the definition of “art dealer” as provided for under the statute, the Artist’s Consignment Act requires that an artist, delivering a work of art to such an art dealer, attach a notation to the work stating: “This work of art is being sold subject to a contract of consignment.”

The purpose of this notice requirement is to protect the artist’s work from the art dealer’s potential creditors who claim a security interest in the dealer’s inventory. If an artist hands over his work to, let’s say, a proprietor of an antique store or of a restaurant for display and sale without the notation, the artist might lose the work if that store or restaurant owner gets into trouble with his creditors because the creditors will have a claim over the artwork that will be given priority over the artist’s own rights to that work. In an abundance of caution, all artists should consider affixing this annotation to their works, even if their art dealer is a prominent gallery. It is even suggested that the artist file a UCC-1 (financing statement form) to perfect the security interest in his/her artwork.

What Should You Do?

If you are an artist working with an “art dealer” or gallerist in Florida, be sure to include on all your pieces a notation stating “THIS WORK OF ART IS SUBJECT TO A CONTRACT OF CONSIGNMENT.” If it is not feasible to display the notation on the work, the law requires that the notation be placed legibly somewhere on the dealer’s premises. In addition, be sure to get your agreement with your dealer in writing and signed by both parties. The more specific your contract, the less confusion down the line and the easier it is to avoid an expensive legal proceeding to assert your rights under the law.