

## Sale of Artwork

Agreements with Art Dealers and  
Galleries

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## Sale of Fine Art

- ✧ Usual arrangement for sale of fine art:  
artist agrees to have a gallery or agent  
handle his/her work.
- ✧ Contract terms are important here.
- ✧ Written contracts best, to specify terms -  
but oral contracts frequently used.

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## Agency agreements

- ✧ Contract provisions specify the conditions of the  
agent's authority.
- ✧ Duration of contract: probably no more than 2  
years; if longer, artist needs right of termination  
with notice.
- ✧ Scope of work covered by agency
  - ✦ Is this an exclusive agent, and so entitled to a  
commission on all sales, whether through his/her  
efforts, or not?

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## Sale or Consignment

- ✧ Usual arrangement is for galleries to take work on consignment.
- ✧ Artist remains owner of work; gallery shows work in exhibitions, promotes work, and acts as agent in sales.
- ✧ Gallery is the agent for the owner.
- ✧ Gallery receives commission in agreed amount when work is sold; artist receives the balance.

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## State laws and consignment

- ✧ Many states (Minnesota included – Minn Stat 324.01) have laws specifying some important aspects of consignment:
  - ✦ Delivery of artwork to an art dealer presumed to create a consignment.
  - ✦ Art dealer is the artist's agent.
  - ✦ Artwork held in trust for the benefit of the artist and is not subject to claims by creditors of the art dealer.
  - ✦ Art dealer bears risk of loss or damage to the art.

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## Consignment agreements: Good faith duties

- ✧ The gallery, as agent, has the obligation to act in good faith for the benefit of the artist.
  - ✦ Best efforts to sell work
  - ✦ Set price for mutual benefit, not to detriment of the artist.
  - ✦ Confidentiality about business dealings with artist
  - ✦ Often based on personal trust with gallery personnel.

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## Consignment terms: exhibitions

- ✧ Agreement may specify a certain number of exhibitions each year.
- ✧ Costs of exhibitions specified: who pays for promotion, catalogs, framing?
- ✧ Artist may want minimum budget for promotion of work.
- ✧ Artistic control: how is work shown? Group or solo? If in a group show, may want to specify conditions about showing with other work.

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## Consignment terms: gallery commission

- ✧ Commissions can be determined 2 ways:
  - ✦ Net price: artist receives specified net price and gallery takes the balance, at whatever price it is sold.
    - ⌘ E.g. net price = \$1,000. Gallery sells at \$3,000, so artist gets \$1,000 and gallery keeps \$2,000.
    - ⌘ Not a common arrangement for obvious reasons!

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## Gallery commissions

- ✧ Other way of determining commissions:
  - ✦ Percentage of sale price.
  - ✦ Given percentage is agreed to (25%, 33%, 50%).
  - ✦ Higher commissions charged when gallery does extensive promotion of the artist's work.
  - ✦ Variation: artist might ask that cost of materials be deducted before sales commission is calculated.

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## Rental of work

- ✧ A gallery might rent work to potential purchasers, too.
- ✧ Commission rate on rentals another topic for the consignment contract.
- ✧ Also need details about insurance, protection of work in transport and at rental location, etc.

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## Pricing

- ✧ Price is a crucial element of any consignment agreement.
- ✧ Question: how much flexibility to give the art dealer? How specific and binding should the schedule of pricing be for each item?
  - ✦ E.g. might give flexibility of 10%
  - ✦ Might also give discounts for certain purchasers - e.g. museums.
  - ✦ Beware: dummy transactions if gallery has too much flexibility: sale to a "dummy" for a low price, and then sale at much higher price without proceeds to artist.

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## Payments

- ✧ Timing and method of payment can also be subject to negotiation.
- ✧ Some arrangements call for monthly stipends against proceeds of sales.
  - ✦ Gallery pays artist certain amount each month and charges the stipends against future sales.

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## Copyright

- ✧ Agreement should reserve copyrights in the artist upon sale.
- ✧ Consignment agreement also should specify this.

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## Damage, Loss, Insurance

- ✧ The gallery/art dealer should protect the artwork and insure it at their expense.
- ✧ UCC: consigned work must be returned to the owner at the gallery's "risk and expense."

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## Georgia O'Keeffe case

- ✧ Georgia O'Keeffe worked with an art dealer in New York, Doris Bry.
- ✧ Bry sold works of O'Keeffe and photographs by husband, Alfred Stieglitz.
- ✧ After many, many years of this relationship, O'Keeffe and Bry had a falling out, and O'Keeffe demanded the return of all of her works and also Stieglitz's photographs.

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## O'Keeffe

- ✧ Bry refused, claiming that O'Keeffe had agreed to make Bry her exclusive agent during O'Keeffe's entire lifetime.
- ✧ There was no single contract recording the business agreement, but a series of letters and partial agreements.

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## O'Keeffe

- ✧ Bry's claim to her right to sell the artwork indefinitely failed: NY court found no enforceable contract.
- ✧ Bry also claimed that O'Keeffe had agreed to provide her with an income of at least \$50,000 per year for life. Court rejected that, too.
- ✧ Bry also claimed that O'Keeffe had agreed to name her the executor of her estate and act as her sales agent after her death. Also rejected.

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