

THE ARTIST'S RESERVED RIGHTS TRANSFER AND SALE AGREEMENT

The accompanying 3 page Agreement form has been drafted by Bob Projansky, a New York lawyer, after my extensive discussions and correspondence with over 500 artists, dealers, lawyers, collectors, museum people, critics and other concerned people involved in the day-to-day workings of the international art world.

The Agreement has been designed to remedy some generally acknowledged inequities in the art world, particularly artists' lack of control over the use of their work and participation in its economics after they no longer own it.

The Agreement form has been written with special awareness of the current ordinary practices and economic realities of the art world, particularly its private, cash and informal nature, with careful regard for the interests and motives of all concerned.

It is expected to be the standard form for the transfer and sale of all contemporary art, and has been made as fair, simple and useful as possible. It can be used either as presented here or slightly altered to fit your specific situation.

If the following information does not answer all your questions consult your attorney.

WHAT THE AGREEMENT DOES

The Agreement is designed to give the artist:

- 15% of any increase in the value of each work each time it is transferred in the future.
- a record of who owns each work at any given time.
- the right to be notified when the work is to be exhibited, so the artist can advise upon or (see Article Seven (b)) veto the proposed exhibition of his/her work.
- the right to borrow the work for exhibition for 2 months every five (5) years (at no cost to the owner).
- the right to be consulted if repairs become necessary.
- half of any rental income paid to the owner for the use of the work at exhibitions, if there ever is any.
- all reproduction rights in the work.

The economic benefits would accrue to the artist for life, plus the life of a surviving spouse (if any) plus 21 years, so as to benefit the artist's children while they are growing up. The artist would maintain aesthetic control only for his/her lifetime.

Although the contract may seem to alter the previous relationship between artist and art owner principally by putting new obligations on the owners, the Agreement really does some very good things for the collector. In return for these obligations, which are almost costless for the collector, he gets substantial benefits; the Agreement is designed:

- to give each owner the formalized right to receive from the artist (or his/her agent) a certified history and *provenance* of the work.
- to create and clarify a non-exploitative, one-to-one relationship between the artist and the owner.
- to maintain this relationship—what lawyers call “privity”—between the artist and each successive owner of the work.
- to establish recognition that the artist maintains a moral relationship to the work, even as the collector owns and controls it.
- to give assurance to the owner that he is using the work in harmony with the artist's intentions.

WHEN TO USE THE AGREEMENT

The Agreement form has been designed to be used by the artist at the time of the FIRST TRANSFER—

either by gift, or barter for things or services, or sale

of EACH INDIVIDUAL work of art—

either a painting, a sculpture, a drawing, a graphic, a multiple, a mural, an immovable sculpture, a non-object work, or any other fine art you can think of

from the artist to ANYONE else—

either a friend, another artist, collector, museum, gynecologist, lawyer, corporation, landlord, relative or dealer.

IMPORTANT: it is NOT for use when you lend your work to exhibitions or when you give it to your dealer on consignment. It IS for use when the dealer sells your consigned work.

In short, the Agreement form is to be used when you part with your work for keeps.

Its terms are effective and it requires a very simple procedure to keep it in effect with each successive owner of your work of art.

It requires the artist and the first owner of the work to fill out and sign the Agreement form and also, to affix a notice of the existence of the Agreement somewhere on the work of art itself.

HOW TO USE THE AGREEMENT

1. To begin, xerox or offset a number of copies of each page of the Agreement form. You will need at least 2 copies for each work you sell or give or trade away. (Save *this* copy to make future copies and so you can refer to this information.)

2. Fill out the contract forms—one copy for you, one for the new owner, and another copy of the last page only (from which you cut out the notice to affix to the work). Make sure that you fill it out legibly.

3. Follow the simple instructions in the margin of the Agreement form. Double check to make sure you have filled in the spaces that must be filled in and struck out what must be struck out.

IMPORTANT: Fill out only those parts of the Specimen TRANSFER AGREEMENT AND RECORD which identify the work and the *original* parties to the *original* Agreement (“between _____ and _____, made the _____ day of _____, 19____,”). Be sure you fill out the specimen NOTICE.

You will note that the contract form speaks in terms of a “sale” (“whereas Artist is willing to sell the Work to Collector and Collector is willing to purchase. . . .”); this doesn't mean you can't use it when you give a friend a work or pay your dentist with a painting or trade works with another artist. We have used the words “sell” and “purchase” only for the sake of simplicity (likewise, we use the term “Collector” just because it is the most all-inclusive word for this purpose). Strictly speaking, even if you are giving or trading your work you are “selling” it for the promises in the Agreement and whatever else you get.

This Agreement form is not a bill of sale or an invoice, nor is it a substitute. If the work is sold for money, prepare a separate bill of sale for your financial records.

In Article One, you enter the price OR value of the work; you, the artist, can put any value that you and the new owner agree upon. If the work is resold for a figure higher than the one you have entered as “value”, the owner will have to pay you 15% of the difference over that figure; obviously the higher the figure you put in, the better break the new owner is getting. If you are giving a friend a work or exchanging with another artist (you need two separate Agreements for the latter situation) you might want to enter a nominal value so that you would get some money, even if he/she later sells it for less than what your dealer would sell it for.

IMPORTANT: if there are rights given the artist under the Agreement form that you as the artist do not want, you strike them out. **IMPORTANT:** be sure to examine ARTICLE SEVEN (b); if you don't feel you must have a veto over all details of the future exhibition of the work, be sure you strike (b) out of ARTICLE SEVEN. Few collectors will want to buy a work if their right to lend it for exhibition is so restricted by someone else. If you give a work away you can leave (b) in, but that will make it very difficult for your friend to sell it. We have put (b) in because (a) is the least an artist should accept and (b) is the most he/she can ask for. If (a) is not enough for you but you don't need (b), have an attorney draft a short rider to the Agreement setting forth those specific controls over exhibition that you feel you must have.

4. You and the Collector should each sign both copies, yours and his, so they will both be legal originals.

5. Before the work is delivered, be sure that a copy of the NOTICE is affixed to the work. DO NOT cut it out of one of the originals. Put it on a stretcher bar or under a sculpture base or wherever else it will be aesthetically invisible yet easily findable. It should get a coat of clear polyurethane—or something like it—to protect it. It won't hurt to put several copies of the NOTICE on a large work.

If your work simply has no place on it for the NOTICE or your signature—in which case you should always use an ancillary document which describes the work, which bears your signature, and which is transferred as a (legal) part of the work—glue the NOTICE on the document.

PROCEDURE FOR FUTURE TRANSFERS. For future transfers, the owner makes three copies of the TRANSFER AGREEMENT AND RECORD form from his original (without the words "SPECIMEN"). He then fills them out, entering the value or price that he and the next owner have agreed upon. Both the old and new owners sign ALL THREE copies of the dated TRANSFER AGREEMENT AND RECORD, each keeps one copy and the third is sent with the 15% payment (if any is required) to the artist or his/her agent. The old owner gives the new owner a copy of the original Agreement, so he will know his responsibilities to the artist and have the TRANSFER AGREEMENT AND RECORD form if HE transfers the work.

THE DEALER

If you have a dealer, he is going to be very important in getting people to sign the contract when he sells your work.

The dealer should make the use of the Agreement a policy of the gallery, thereby giving the artists in the gallery collective strength against those few collectors and institutions who do not really have the artist's interests at heart.

Remember, your dealer knows all the ins and outs that go down in the business of the art world. He knows the ways to get the few reluctant art buyers to sign the Agreement—the better the dealer the more ways and the more buyers he knows and the easier it will be. He can do what he does now when he wants things for his artists—give the buyer favors, exchange privileges, preferential treatment, discounts, hot tips, time, advice and all the other things that collectors expect and appreciate.

The Agreement only formalizes what dealers do now anyway; dealers try to keep track of the work they have sold, but now they can only rely on exhibition lists, catalogues, hit-or-miss intelligence and publicity to keep them up-to-date. The Agreement creates a very simple record system, which will automatically maintain a biography of each work and a chronological record of ownership. It is private, uncluttered and no dealer should ever have to hire another secretary to administer it; if each work engenders a dozen pieces of paper over the entire life of the Agreement, it will be a lot. The requirement of giving a *provenance* to the current owner is no more than what goes on today, but under this system it will be accurate and almost effortless.

A dealer shouldn't be expected to do this for nothing; it seems reasonable to compensate the dealer with some part of the 15% he/she is collecting for the artist, perhaps one-third of it.

When, as is often the case, an artist moves from one dealer to a more prestigious one, the first dealer might continue to collect whatever payments are occasioned by the resale of the earlier work.

When a dealer BUYS work directly from the artist (for resale or otherwise), they should write the intended RETAIL value of the work in their Agreement, NOT the actual amount of money the dealer is paying the artist, which would be less.

Getting the contract signed is mostly a state of mind. If your dealer does not think the benefits of the Agreement are important for you, he will have dozens of reasons why he can't get those few reluctant buyers to sign it; on the other hand, if he seriously wants you to have these benefits he will be able to overcome all those obstacles without losing a single sale.

THE FACTS OF LIFE: YOU, THE ART WORLD AND THE AGREEMENT

The general response to the preliminary draft of this Agreement form has been extremely favorable; the vast majority of people in the art world feel it is fair, reasonable and practical. A few have expressed certain reservations about whether or not people will actually use it. These reservations can be summed up in two basic statements:

- "... the economics of buying and selling art is so fragile that if you place one more burden on the collectors of art, they will simply stop buying art . . .", and
- "... I will certainly use the Agreement—if everyone else uses it . . ."

The first statement is nonsense; clearly the art will be just as desirable with as without the Agreement and there is no reason why the value of any art should be affected at all, especially if this contract is standard practice in the art world—which brings us to the second statement. If there is a problem here, this statement reflects it: it is the concern of the individual artist or dealer that the insistence on the use of the contract will jeopardize their sales in a competitive market.

If we examine this notion carefully, we see it doesn't hold up.

ALL artists sell, trade and give their work to only two kinds of people:

- those who are their friends.
- those who are not their friends.

Obviously, your friends will not give you a hard time; they will sign the Agreement with you. The ONLY trouble will come when you are selling to someone who is not a friend. Since surely 75% of all art that is sold is bought by people who are friends of the artist or dealer—friends who dine together, see each other socially, drink together, weekend together, etc.—whatever resistance may appear will come only in respect to some portion of the 25% of your work that is being sold to strangers. Of these people, most will wish to be on good terms with you and will be happy to enter into the Agreement with you. This leaves perhaps 5% of your sales which will encounter serious resistance over the contract. Even this real resistance should decrease toward zero as the contract comes into widespread use.

In a manner of speaking, this Agreement will help you discover who your friends are.

If a collector wants to buy but doesn't want to sign the Agreement, you should tell him that all your work is sold under the contract, that it is standard for your work.

If he buys work only from those few artists who won't insist on using the Agreement he is being very foolish; non-use of this Agreement is a very dumb criterion for building one's collection.

There are other things that you can point out to the reluctant collector:

- first of all, it's not going to cost him anything unless your work appreciates in value. If that doesn't cut any ice, and he wants to keep *all* of whatever profit he might make with your work, you can simply write in a higher value for it, thus giving him a free ride for the first part of the appreciation he anticipates.
- if and when he sells your work and he owes you some payment, he doesn't necessarily have to pay you with money; you can give him credit against the purchase of a new work or take payment in services or something other than money.
- of course, if a collector buys a work without the contract when the use of the Agreement has become the standard practice for the artist, the collector will have to rely on sheer good-will when he later wants the artist (or his/her dealer) to appraise, repair or authenticate it. Why he should expect to find any good-will there is anybody's guess.

Is the collector really going to pass up your work because you want him to sign the contract? Work that he likes and thinks is worth having? If the answer is yes, given the fact that it won't cost *him* anything to give you the respect that you as the creator of the work deserve—if that will keep him from buying, he is being very stubborn and foolish and nobody can tell you how to illuminate him.

Using the contract doesn't mean that all your relationships in the art world will hereafter be strictly business or that you will have to enforce your rights down to the last penny. Friends will still be friends; you will be able to waive your rights to payments (in whole or in part), your right to make repairs, to grant reproduction rights, to be consulted—but they will be YOUR rights and the choices will be YOURS.

The Agreement form has been prepared to be used by any and all artists—known, well-known and unknown. Simply make a lot of copies and use it whenever you give, trade or sell your work. It will be effective from the moment you use it. The more artists and dealers there are using it, the better and easier it will be for everybody. It requires no organization, no dues, no government agency, no meetings, no public registration, no nothing—just your will to use it. Just plug it in and watch it go—a perfect waffle every time!

ENFORCEMENT

First, let's put this question in perspective: most people will honor the Agreement because most people honor agreements. Those few people who will try to cheat you are likely to be the same kinds who will give you a hard time about signing the Agreement in the first place. Later owners will be more likely to try to cheat you than the first owner, with whom you or your dealer have had some face-to-face contact, but there are strong reasons why both first and future owners should fulfill the contract's terms.

What happens if owner #2 sells your work to owner #3 and doesn't send you the transfer form? (He's not sending your money, either.)

Nothing happens. (You don't know about it yet.)

Sooner or later you do find out about it because it takes a lot of effort to conceal such sales and the grapevine will get the news to you (or your dealer) anyway. To conceal the sale, owner #3 has to conceal the work and he's not going to hide a good and valuable work just to save a little money. And if he ever wants to sell it, repair it, appraise it or authenticate it, he **MUST** come to you (or your dealer). When you do find out about such a transfer—and you will—you sue owner #2, who will be stuck for 15% of the increase based on the price to owner #3 OR on the value at the time you find out about it, which maybe much higher. Clearly, a seller (in this case owner #2) would be extremely foolish to take this chance, to risk having to pay a lot of money just to save a little money.

As to falsifying values reported to the artist, there will be as much pressure from the new owner to put in a falsely high value as from the old owner to put in a low value. There are real difficulties inherent in getting two people to lie in unison, especially if it only benefits one of them—the seller. In 95% of the cases the amount of money to be paid to the artist won't be enough to compel the collectors to lie to you.

You will note that in the event you have to sue to enforce any of your rights under the Agreement, ARTICLE NINETEEN gives you the right to recover reasonable attorney's fees in addition to whatever else you may be entitled to.

SUMMATION

We realize that this Agreement is essentially unprecedented in the art world and that it just may cause a little rumbling and trembling; on the other hand, the ills it remedies are universally acknowledged to exist and no other practical way has ever been devised to cure them.

Whether or not you, the artist, use it, is of course up to you; what we have given you is a legal tool which you can use yourself to establish ongoing rights when you transfer your work. This is a substitute for what has existed before—nothing.

We have done this for no recompense, for just the pleasure and challenge of the problem, feeling that should there ever be a question about artists' rights in reference to their art, the artist is more right than anyone else.

Seth Siegelau, 24 February 1971, New York

SEE OVERSIDE FOR AGREEMENT FORM

Please POST, REPRODUCE and USE this poster freely.
This poster is not to be sold.

All the information contained on this poster will also be contained in the April 1971 issue of Art News, Studio International and Arts Canada.

The cost of the production, printing and distribution of this poster has been underwritten by the School of Visual Arts in New York.

For further information: Seth Siegelau, Post Office Box 350, New York 10013, U.S.A.