

Offered: 4/15/88
Referred: Rules

5-0117X

Original sponsors: Gruenberg, Goll,
Larson, et al.

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 SENATE CS FOR CS FOR HOUSE BILL NO. 3 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act relating to the private sale and consignment
7 of works of art."
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
9 * Section 1. AS 45 is amended by adding a new chapter to read:
10 CHAPTER 67. ARTISTS AND WORKS OF ART.
11 Sec. 45.67.010. ARTISTS AND ART DEALER RELATIONSHIPS. (a) When
12 an artist delivers or causes to be delivered a work of art of the
13 artist's own creation to an art dealer for the purpose of sale, or
14 exhibition and sale, on a commission, fee, or other basis of compen-
15 sation, the acceptance of the work of art by the art dealer is a
16 consignment, and
17 (1) the art dealer is, with respect to the work of art, the
18 agent of the artist;
19 (2) the work of art is trust property in the hands of the
20 art dealer for the benefit of the artist;
21 (3) proceeds from the sale of the work of art are trust
22 funds in the hands of the art dealer for the benefit of the artist;
23 (4) the art dealer shall return an unsold work of art on
24 demand of the artist;
25 (5) the art dealer is strictly liable for loss or damage to
26 a work of art while the work of art is in the possession of the art
27 dealer; the value of a lost or damaged work of art is the value estab-
28 lished by written agreement between the artist and art dealer before
29 the loss or damage of the work of art; if no written agreement

1 establishing the value of the work of art exists, the value is the
2 fair market value of the work of art less the art dealer's commission
3 or fee; and

4 (6) the dealer shall transmit the proceeds to the artist
5 within 30 days of receipt by the dealer; if the sale is on install-
6 ment, the money from each installment shall first be applied to pay
7 any balance due the artist on the sale, unless the artist expressly
8 agrees in writing that the proceeds on each installment are to be paid
9 according to a percentage established by the consignment agreement.

10 (b) A work of art initially received as a consignment remains
11 trust property notwithstanding the subsequent purchase of the artwork
12 by the art dealer directly or indirectly for the art dealer's own
13 account until the consignment price due to the artist is paid in full.
14 The trusteeship continues until the fiduciary obligation of the art
15 dealer with respect to the transaction is discharged in full.

16 Sec. 45.67.020. WAIVER. (a) A provision of a contract or
17 agreement whereby the artist waives a provision of AS 45.67.010 is
18 void except as provided in this subsection. An artist may waive the
19 provisions of AS 45.67.010 if the waiver is clear, conspicuous, and
20 agreed to in writing by the artist. A waiver under this subsection is
21 not valid with respect to the proceeds of a work of art initially
22 received as a consignment but subsequently purchased by the art dealer
23 directly or indirectly for the art dealer's own account.

24 (b) A waiver under (a) of this section may not inure to the
25 benefit of the art dealer's creditors in a manner that is inconsis-
26 tent with the artist's rights under AS 45.67.010.

27 Sec. 45.67.100. DEFINITIONS. In this chapter, unless the con-
28 text otherwise requires,

29 (1) "art dealer" means a person engaged in the business of

1 selling works of art, other than a person exclusively engaged in the
2 business of selling goods at public auction;

3 (2) "artist" means the creator of a work of art or, if
4 deceased, the heirs or personal representatives of the creator;

5 (3) "consignment" means that no title to or estate in the
6 goods or right to possession superior to that of the consignor vests
7 in the consignee, notwithstanding the consignee's power or authority
8 to transfer and convey, to third person, all of the right, title and
9 interest of the consignor, in and to the goods;

10 (4) "creditor" has the meaning given in AS 45.01.201;

11 (5) "work of art" means an original or multiple original
12 art work including:

13 (A) visual art such as a painting, sculpture, drawing,
14 mosaic, or photograph;

15 (B) calligraphy;

16 (C) graphic art such as an etching, lithograph, offset
17 print, or silk screen;

18 (D) craft work in clay, textile, fiber, wood, metal,
19 plastic, or glass materials;

20 (E) mixed media such as a collage or any combination
21 of art media in this subparagraph.

22 * Sec. 2. APPLICABILITY. The provisions of AS 45.67.010 and 45.67.020
23 may not be construed to have an effect upon a written or oral contract or
24 arrangement in existence on the effective date of this section, except by
25 the mutual written consent of the parties.