

HB

102

CSHB 102

Pertaining to works of fine art

Sponsor's

{ Eliason,
Gurman,
Miller, Parr.

Kelly was chairman when this passed with three "do passes"
(Kelly, Zeigler, Bradely)

This bill will protect works of fine art from being con-
fiscated by creditors of the art dealers.

- Attached:
- 1) Bill
 - 2) Back up
 - 3) Minutes

House Vote: 38 to 0 2 excused.

38
38 to 0
2 excused
2 excused was sponsor of bill

Bob

You probably should ask the C.S.M.B. be adopted:
The only difference in it than original is that
definition of Fine Art includes photograph. Sponsor
has this added ^{this} because he received ~~it~~ a letter
from a ~~the~~ constituent who is a professional photographer

Original sponsors: Eliason, Duncan,
Miller and Parr

Offered: 2/12/79
Referred: Rules

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 102

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL.

6 For an Act entitled: "An Act relating to rights in works of fine art."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 45.05.120 is amended by adding a new subsection to read:

9 (e) Whenever an artist delivers or causes to be delivered a work
10 of fine art of his own creation to an art dealer for the purpose of
11 sale, or exhibition and sale to the public on a commission or fee or
12 other basis of compensation, the work of fine art is not subject to the
13 claims of the art dealer's creditors. For the purposes of this sub-
14 section

15 (1) "art dealer" means a person other than a public auc-
16 tioneer engaged in the business of selling works of fine art;

17 (2) "artist" means the creator of a work of fine art;

18 (3) "fine art" includes a painting, sculpture, drawing,
19 photograph, or work of graphic art.
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that a bank or attorney would charge makes it scarcely worthwhile to set up a trust of less than \$10,000. If you elect to establish one of these special personal trusts, your attorney must draw up a standard trust document and should review your will.

Currently only two institutions offer these special trusts, but more are expected to follow, and we'll keep you informed:

Home Federal Trust, P.O. Box 1401, San Diego, CA 92112 (714-238-7241).

City Trust Services, 1141 E. Jersey St., Elizabeth, NJ 07201 (201-527-8813).

Check with the institutions for the tax implications of setting up a trust in your state and what assets they will accept for inclusion.

Marketing

ARTISTS' AGENTS: WHO ARE THEY?

Not a week goes by that we don't get a letter from one of you asking for the names of artists' agents or representatives. We don't know of any, but we thought this might have something to do with the fact that artists' agents aren't a New York phenomenon. So we asked Calvin Goodman, West Los Angeles-based consultant to artists, if he knew who they were.

Said Goodman, "The only artists' agents I know are either related to the artist or close friends. They are in the business not for the money, but because they have a deep personal commitment to the artist and his work."

The reason for this is economics, Goodman continues. Unlike agents who represent entertainers or writers, where there's a lot of money involved, artists' agents can't really make a living selling art after travel, entertainment, and other expenses have been deducted. An artist's agent's role is to build a reputation and find collectors for the artist. Once this has been accomplished, the artist will usually go with a gallery, at which time the agent must bow out. Or, if the artist wishes to be represented by many galleries in a wide geographic area, the agent can continue to represent the artist and make contacts across the country with various galleries. But look at the commission he will get. Most galleries take a 40% commission. This means that the agent's commission must come out of the other 60% that would ordinarily go to the artist, reducing the agent's commission to perhaps 10% to 25%, just not enough for a profitable

business. Nor is it likely that the artist will want to give up this much of his income.

Therefore, the only people who go into the business, aside from those with a vested interest in the artist, are fools who haven't figured out the economics yet, or scoundrels who are out to fleece you. These are people who will represent you for a fee, usually paid in advance. So, Goodman concludes, if you should be contacted by an artist's representative and decide anyway to give him a try, never pay him until after he produces sales.

Galleries

WHEN A GALLERY GOES BANKRUPT, WHAT HAPPENS TO THE ART?

One of the questions on our readership survey was, "What kind of legal problems have you encountered?" A not insignificant number responded, "Paintings held when a gallery went bankrupt," an all too familiar story to many artists who consign work to galleries. Just take the case of what happened in Omni, Florida, earlier this year, as reported in the *Miami Herald*.

Galeria Art Gallery opened its doors on June 8 with ambitious plans for showings, only to surprise suppliers and landlord alike by closing down on July 24. Gone was the owner, Richard Fox, a man described by most involved as a reputable businessman. His home phone was disconnected and he moved from his apartment, leaving no forwarding address. Few knew of his impending departure; even the Gallery Director was stunned.

But the Central National Bank in Miami knew. According to the bank's attorney, it had received a letter from Fox's corporation—Motif Gallery Art, Inc.—advising it of the shutdown. He added that the corporation owed the bank a substantial sum."

Another bank attorney, when asked what was happening to the art consigned by artists to the gallery, explained: "It's my understanding that the inventory of the Galeria was pledged to the bank as collateral. Sure, we've been besieged by phone calls from artists and other interested parties. . . . But the bank is a lender and has to protect its interests." Bank officials went on to say that they were in the process of making an inventory and in due time the artists would get to see what it had. In the meantime, they were left wondering whether the bank had their work, whether Fox had taken it with them when he disappeared, or what had happened to it.

The problem here revolves around the issue of consignment. So let's take a closer look at the term and how you may be able to protect your work when you consign it. The following is taken from *This Business of Art*, by Diane Cochrane (Watson-Guptill Publications, 1515 Broadway, New York, NY 10036, \$12.50. *AABL* subscribers may request a 20% discount on the book).

"What exactly does the term 'consignment' mean? When you consign work to a dealer, you set up an agency relationship with him. Under the law, as an agent, he must take care of your work and pay for any loss or damage suffered while work is in his possession if he hasn't exercised reasonable care to protect it. In other words, if work is stolen from an unattended, unlocked gallery, the dealer would have to repay you for the work.

"Consignment also means that while your dealer has the power to sell your work, you own it until you have been paid in full for it.

"Now, this sounds good, but in actuality a dealer-agency relationship is fraught with a certain amount of danger. If the dealer goes bankrupt, consigned work may be seized to satisfy the claims of his creditors.

"How can I prevent my work from being seized by creditors? It's difficult unless you live in New York or California (see below for what happens in these two states). About the only recourse you have is to fill out UCC Form No. 1, which guarantees your rights to your work under the Code.

What does a UCC Form No. 1 do? It prevents consigned work from being subject to the claims of creditors. In essence, it allows you to place a lien against the work. This means you have first claim on it and will get it back if and when creditors descend on the dealer.

What's wrong with filing this form? It's a cumbersome procedure and one which most dealers are reluctant to agree to. When you file UCC Form No. 1, your dealer cannot sell the work until the lien is removed by you. This means he has to contact you, and you have to remove the lien on the work in writing, a process not designed to expedite sales. Nevertheless, if you consign a number of works, each worth hundreds of dollars, you can't risk not asking your dealer to allow you to file a UCC form on the work.

Where do I get and file this form? Most legal stationery stores carry them or can get them for you. To file the form, check with either your County Clerk's office or the Secretary of State for the proper procedure; they'll tell you where to file the form and how

much it will cost to file—usually a few dollars.

Why is it unnecessary to file this in New York or California? These two states have enacted laws automatically guaranteeing the rights the filed form provides, so you don't have to worry about work being claimed by creditors."

Contracts

MODEL CONTRACT FOR ILLUSTRATORS

by Tad Crawford

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The new copyright law (effective January 1, 1978) requires the use of written contracts for the purchase of exclusive reproduction rights in artwork. For this reason, many publishers and other users of commercial art are now demanding that artists sign written contracts instead of following the more casual procedures that were often in effect prior to January 1, 1978. Commercial artists are having to learn more about what rights can be sold in their art and how contracts for the sale of reproduction rights can be negotiated. The model contract shown here is intended to aid commercial artists by drawing their attention to the issues that are likely to become troublesome in selling reproduction rights in their art. It is drafted as if written by the purchaser, but an artist can easily modify the contract and place the needed provisions on the artist's own stationery.

The most important points the contracts makes are:

- The contract clearly shows that only limited rights of usage are transferred, so that additional payments will have to be made for additional uses of material.
- It provides for the payment of cancellation fees.
- It calls for copyright notice to appear in the artist's name. This is desirable because the copyright law allows a group registration for one \$10 fee for all artwork appearing in magazines during a twelve month period, but only if copyright notice in the artist's name appeared with the artwork. By letting the artist register inexpensively, the benefits of copyright registration can be obtained. Also, it's important to keep in mind that the magazine's registration does not register the artist's copyright in his or her contribution. This is explained in more detail in Copyright Office Circular #60a, which can be obtained free by writing to the Copyright Office, Library of Congress,

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February 6, 1979

The Honorable Richard I. Eliason
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Eliason

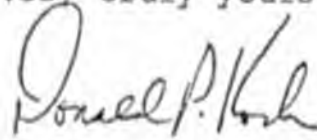
Re: HB 102

"An Act relating to rights in works
of fine art"

Your proposal introduced on January 31, 1979 is most welcome and will hopefully receive favorable consideration by the Legislature.

I am and have been a professional photographer for about 6 years, albeit, on a part-time basis. I and others like me do place work on consignment and are thus exposed to the same problems HB 102 is intended to remedy. Photographers have for years been fighting to have their work viewed as an art form with varying degrees of success. Many have had their work on consignment with art dealers. I personally have had such on several occasions. I urge that you consider extension of the protection of this proposal to photographic works by inserting the word "photograph" on line 18 following the word "drawing,". Thank you.

Very truly yours,



Donald P. Koch

cc: Rep. Duncan
Rep. Miller
Rep. Parr
House State Affairs Committee