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THE ARTIST-GALLERY CONSIGNMENT AGREEMENT

by **Joshua Kaufman**

By far and away, the most common relationship between an artist and a gallery is based on a consignment agreement. For those of you old enough to remember the good ole days (Were they actually ever that good?), there was a time when galleries provided artists with stip-



Joshua Kaufman.

ends and guarantees of all sorts. With the exception of a few very prominent artists, those days have gone by the wayside and the almost universal relationship between artist and galleries now is one of consignee/consignor.

Under a consignment agreement, in its most basic form, the artist in essence lends the gallery some artwork for a limited period of time. If and when the gallery sells the works, they pay the artist an agreed-to percent of the proceeds and if the works do not sell, they are returned to the artist. Even though the artworks are in the care of the gallery, they always remain the artist's property.

Sounds simple enough, yet on the other hand, my checklist that I review with clients when I draft artist-gallery agreements has 250

points contained in it. Certainly, not all of them make their way into the final agreement; perhaps not even most of them. But there are that many potential issues that can arise in an artist-gallery consignment relationship. I will highlight some of the most critical ones in this article.

Who are the contracting parties? It would seem simple: the agreement is between the artist and the

then if anything goes wrong, the artist's recourse is not against the individual gallery owner, but the corporate entity which, no matter how wealthy the owner, may not have any assets. If the corporate entity is not sufficiently endowed, an artist would want to make the gallery owner sign their contract individually as well.

Of course, if you are the gallery owner, you would resist doing so like the plague. Also, if you are the gallery owner and are concerned about the artist's health or age, you might want to include clauses saying that the

agreements are for a specific duration or are linked to shows, so that the consignment agreement would last at least through a certain period following the exhibit or show.

There are agreements where options are granted to extend the contract's term that are often conditioned upon performance. In other words, the agreement will automatically extend beyond the initial term through some renewal term, if the artist has earned a specific dollar amount.

What type of media are covered? This can be an issue if the artist is a multimedia artist where they create sculptures, paintings, prints, and the like. The question becomes, "Is this gallery equipped to handle the various media or does one limit the contract to just the medium that the gallery has proficiency in selling?"

Is the agreement exclusive? Exclusivity is a pliable term in that it may mean different things to different people and therefore really needs to be hammered out with particularity in an agreement. An exclusive agreement can mean that only a specific gallery sells the artist's work. But, an exclu-

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gallery owner. Well, no the gallery, many times, is actually some form of corporate entity. Often an artist works with a gallery director or owner and thinks that they are the responsible party. In real life they might be, but not in the legal world. If the contract entered into is in the gallery's corporate name (in a few instances, this would apply to the artist who has their own company, but it is much less frequent),

artist's heirs or estate are bound by the agreement as well.

How long does a consignment agreement last? It depends, as there is really no standard term in this regard. Many agreements are open-ended where the art stays with the gallery until either party terminates in (hopefully) an orderly manner with written notice. Some consignment

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sive agreement can be exclusive by country. It can be exclusive in a city. It can be exclusive in a medium. It can be exclusive for a timeframe. Therefore, you could have exclusive agreements with many galleries.

If your exclusivity is based on territory, you could have an exclusive gallery in New York, an exclusive gallery in LA, an exclusive gallery in Miami, and a different exclusive gallery in London. On the other hand, if there is truly one exclusive gallery then any other gallery who wants to have shows of the artist's work has to deal through that exclusive gallery.

Another area of exclusivity arises in the arena of commissions. If a gallery has an exclusive consignment agreement, would they also have any form of exclusivity or obligations or rights in regard to acquiring commissions?

Pre-existing customers: How to deal with pre-existing relationships? Once a gallery has been granted exclusive rights, if the artist is an established artist and has a long history of selling to certain collectors or through other galleries, the question arises: How to accommodate the new gallery if sales are made to pre-existing customers? Do they

get any fee, a partial fee or a full fee?

Studio Sales: One very common sales technique that artists and galleries employ is having collectors visit artists in their studio where they get to know the artist and observe the process of creating the artwork. They literally smell the paint!

This will likely enhance the collecting experience and they may become

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close, and bond with the artist—and, hopefully, be collectors for life.

These types of visits and exposure can be useful for everyone in the equation. However, what the galleries fear is once the relationship between the collector and the artist is made, that the two of them will try to circumvent the gallery—the artist can sell for less, but make more and the collector can buy for less.

They are both happy and the gallery who made the introduction or has an exclusive is left out in the cold.

That does not make for a healthy relationship or a happy gallery.

Shipping Costs: Another area that should not be difficult to negotiate, but needs to be addressed, is shipping costs. In my experience, you will find either the gallery paying the shipping both ways or at a minimum the gallery pays to have the works shipped to it and the artist might get stuck having to pay for unsold artworks at the back-end.

Frames: One area of great contention, although many people do not anticipate it and do not think of it upfront, is the cost of frames. Frames are often made for a particular artwork and are not re-usable by the gallery on other artworks. As you can imagine, when the consignment period ends, where the gallery has spent thousands of dollars on unique frames for the works, those artworks are to be returned to the artist, and the gallery wants the artist to pay for the frames. The artist is often reluctant to do so because of the cost of the frames and the addi-

tional costs of shipping framed works, rather than having the artworks rolled up and put in tubes and sent back to them. Thousands of dollars or more are often at stake here and frequently there are huge fights over this matter, as trivial as it may seem. Therefore, if frames are not standard sizes where the gallery can reuse them easily in the future, this area should be discussed and addressed so that the artworks are not held hostage at the end of the parties' relationship.

The Gallery Show: If there is, in fact, a gallery show, several issues arise that need to be dealt with. First, who chooses the artwork to be in the show? Does the artist simply choose from their portfolio and send it to the gallery or does the gallery come, visit, and select what it believes is best? Is it a collaborative decision? Once the artwork is decided upon, how the show is to be hung, particularly if it is a group show, is often a very emotional issue. When there is a show, it is usually accompanied by an opening.

The costs incurred in the opening can be nominal or can be extremely high. Once again, there is no right or wrong path; galleries have different styles for their openings. Sometimes they share the expenses with the artists, sometimes they

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incur them on their own. Galleries vary in what type of opening they are willing to fund. What if the artist wants something more elaborate? Are they then expected to pay for the difference? The same comes true with announcements. Is it an electronic announcement? Is it a simple postcard? Is it a poster? Is a catalogue created for the show?

Over the years, I have seen many arguments and upsets over openings, yet no one is necessarily wrong. The artist has certain expectations based on his

or her beliefs or what their prior gallery did. The gallery turns around and says, Therefore, the extent, nature, and costs of any opening should be worked

The extent, nature and costs of any opening reception for a show should be worked out between the gallery and the artist at the outset, before expenses are incurred, bills submitted and tempers frayed.

"Well, this is what we always do. We did not do any more or less for you." There can be much confusion and disappointment based on unmet expectations and yet no one may have done anything wrong.

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This article continues in a future issue of Art World News. Joshua J. Kaufman,

Esq. is a partner in the law firm of Venable, LLP, and Chair of their Copyright & Licensing Group. He is one of the country's foremost attorneys in art, copyright, and licensing law. He has published more than 200 articles, co-authored several books, and is a regular lecturer on various topics in the Art Law and Licensing fields. Mr. Kaufman is also an adjunct law professor at American University Law School where he teaches Art Law, and is counsel to the Art Copyright Coalition. To reach Mr. Kaufman for further information, send him an e-mail at: jjkaufman@venable.com or call him at (202) 344-8538.

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notion also explains the calming, orderly, and minimalist trends we witnessed. As fast as we like to go, we do seek out our "zen" time, characterized by patterns, solid colors, clean lines, beauty, and a sense of order. It was not uncommon to see both the edgy and soothing art mingling on the same wall. They worked together. They balanced each other out. I could envision this artistic philosophy in our own clients' homes.

Going into the Miami shows, I was prepared to do a lot of eye rolling but

surprisingly, I didn't. I liked Art Miami better than Art Basel because I thought the art was juried brilliantly without trying too hard to

and that was gratifying. So go. The Miami modern art shows may not be "your" art, but that doesn't matter. They will open your eyes to

The Miami art shows may not be 'your' art but they open your eyes to global trends and stimulate your artistic sensibilities unlike anything else you may do all year.

be pretentious or esoteric for the sake of being pretentious or esoteric (no offense, Art Basel, but really on some exhibits). I found out later that I was far from alone in this observation

global trends and stimulate your artistic sensibilities unlike anything else you may do all year. Look beyond the outrageous and find the future that works for you. You owe it to yourself,

your collectors, your artists, and your business. One more thing... it's fun. Miami with your colleagues in December? Come on!

Cristi Smith is co-owner and president of Ford Smith Fine Art, and is agent and publisher for her husband, artist Ford Smith. Her expertise spans two decades in the retail advertising and marketing arenas with executive leadership in Fortune 100 retailers in addition to start-up companies in the high-end home decor industry. Telephone Mrs. Smith at (770) 552-5942 or visit the Ford Smith Fine Art website located at: www.fordsmithfineart.com.