SALES OF FINE ART
Act 90 of 1970

AN ACT relating to the relationship between artists, art consignors, and art dealers; regulating certain consignment sales; establishing trust property and trust funds; limiting waivers of rights; and requiring certain receipts.

History: 1970, Act 90, Eff. Jan. 1, 1971;—Am. 1982, Act 396, Eff. Mar. 30, 1983.

The People of the State of Michigan enact:

442.311 Definitions.

Sec. 1. As used in this act:

(a) "Art dealer" means a person engaged in the business of selling works of fine art, other than a person exclusively engaged in the business of selling goods at public auction.

(b) "Artist" means the creator of a work of fine art or, if the creator is deceased, the creator's heirs or personal representatives.

(c) "Bona fide purchaser" means a person who in good faith makes a purchase without notice of any outstanding rights of others.

(d) "Commission" means the fee, compensation, or percentage of actual selling price of a work of fine art, agreed upon by the artist and art dealer, which the art dealer may retain after sale of the artist's work of fine art to a third party.

(e) "Consignor" means a person who delivers or causes to be delivered a work of fine art to an art dealer on consignment.

(f) "Fine art" means an original art or craft work which is:

(*i*) A visual rendition including, but not limited to, a painting, drawing, sculpture, mosaic, video tape, or photograph.

(*ii*) A work of calligraphy.

(*iii*) A work of graphic art including, but not limited to, an etching, lithograph, offset print, or silk screen.

(*iv*) A craft work in materials including, but not limited to, clay, textile, fiber, wood, metal, plastic, glass, stone, or leather.

(*v*) A work in mixed media including, but not limited to, a collage or a work consisting of any combination of subparagraphs (*i*) to (*iv*).

(g) "On consignment" means that no title to or estate in the fine art or right to possession of the fine art superior to that of the consignor vests in the consignee, except that the consignee has the power or authority to transfer and convey, to a third person, all of the right, title, and interest of the consignor, in and to the fine art.

(h) "Person" means an individual, partnership, corporation, association, or other group, however organized.

History: 1970, Act 90, Eff. Jan. 1, 1971;—Am. 1982, Act 396, Eff. Mar. 30, 1983.

442.312 Consignment; trust property; trust funds; claims, liens, or security interest.

Sec. 2. Any custom, practice, or usage of the trade to the contrary notwithstanding:

(a) When an artist or other person delivers or causes to be delivered a work of fine art to an art dealer for the purpose of sale on a commission, the delivery to and acceptance of the work of fine art by the art dealer is considered to be on consignment and the art dealer shall thereafter, with respect to the work of fine art, be considered to be the consignee of the work of fine art.

(b) The work of fine art is trust property in the hands of the consignee for the benefit of the consignor.

(c) Any proceeds due the artist or other consignor from the sale of the work of fine art are trust funds in the hands of the consignee for the benefit of the consignor.

(d) A work of fine art initially received on consignment shall be considered to remain trust property notwithstanding the subsequent purchase of the work of fine art by the consignee directly or indirectly for the consignee's own account until the terms of purchase are completed. If the work is thereafter resold to a third party who is a bona fide purchaser before the consignor has been paid in full, the work of fine art ceases to be trust property and the proceeds of the resale are trust funds in the hands of the consignee for the benefit of the consignor to the extent necessary to pay any balance still due to the consignor. The trusteeship relating to proceeds of the resale shall continue until the fiduciary obligation of the consignee with respect to a transaction is discharged in full.

(e) Property or funds which are trust property or trust funds pursuant to this section are not subject to the claims, liens, or security interest of the creditors of the art dealer, notwithstanding any other section of this act.

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History: 1970, Act 90, Eff. Jan. 1, 1971;—Am. 1982, Act 396, Eff. Mar. 30, 1983.

442.312a Written receipt as condition to commission on consignment; contents; effect of prior contract.

Sec. 2a. (1) An art dealer may accept a work of fine art for a commission on consignment only if before or at the time of acceptance the art dealer delivers to the consignor a written receipt describing the works of fine art delivered to the art dealer and the consignment nature of the delivery.

(2) Except as provided in this subsection, this section applies to a work of fine art accepted on consignment on and after the effective date of this section. If a work of fine art is accepted under a contract in existence before the effective date of this section, this section is applicable to that work of fine art, the proceeds of sale from that work of fine art, and the art dealers involved in the transaction, only to the extent that the provisions of this act do not conflict with that contract.

History: Add. 1982, Act 396, Eff. Mar. 30, 1983.

442.313 Repealed. 1982, Act 396, Eff. Mar. 30, 1983.

Compiler's note: The repealed section pertained to waiver of provisions of act.

442.314 Effect of act as to existing contracts or arrangements.

Sec. 4. This act does not affect any written or oral contract or arrangement in existence before January 1, 1971, nor to any extensions or renewals of a contract except by the mutual written consent of the parties.

History: 1970, Act 90, Eff. Jan. 1, 1971;—Am. 1982, Act 396, Eff. Mar. 30, 1983.

442.315 Effective date of act.

Sec. 5. This act shall take effect on January 1, 1971.

History: 1970, Act 90, Eff. Jan. 1, 1971.

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