

USE OF ARTISTS' WORK FOR FUNDRAISING

OVERVIEW

This document sets out recommended standards for professional artists. The guidelines serve as a model for practical and ethical practices facilitating fair and equitable dealings between creators and presenters. This is a living document and will be revised and updated based upon ongoing input from stakeholders.

Art auctions are operated as fundraisers by many different organizations. Whether the artist is viewed as an exhibiting professional who is contributing art, or merely as a source of income for a fundraiser, or something in between, depends on the nature of the event. Audiences and sale results also vary. Since all art auctions keep at least part of the sale price of the work, and since none of them could operate without the artists' participation, artists should consider auctions as business opportunities and/or charitable contributions rather than occasions to be grateful for "exposure."

Gifts and donations are sometimes solicited from artists, as well as initiated by artists themselves. Artists may donate a work to a registered charity, to federal or provincial governments, to a public gallery or other institution or organization, or to another person as a gift. These donations may be intended by the artist as fundraising, exhibition, or charitable opportunities. In order that the artist may realize the best economic and social return for their gift, the artist should be aware of the rules that govern Canada Revenue Agency's consideration of donations for income tax purposes.

Wholesaling of artwork by the artist to a fundraiser is possible but is not considered by this document. Where wholesaling takes place, the artist will sell the work outright to the fundraiser, and the fundraiser may add any markup it considers appropriate in order to reach a selling price.

The artist's relationship to fundraising activities and/or invitations to donate art should be that of professional to professional. No artist should feel required to offer gifts of their time and production as a response to pressure. At the same time, the artist may legitimately think that the opportunity presented outweighs any less than ideal conditions.

Rights and responsibilities for artists' and organizers of fundraising events are outlined in this document. References to Canada Revenue Agency's regulations for the charitable donation of artwork and artists' goods are also included. The overall intention is to remove uncertainty and limit the potential for exploitation for both the artist and the user(s) of their work.

1 DONATIONS OF ARTWORK

- 1.1 No artist should be expected to donate works of art outright to any organization for fundraising purposes.
- 1.2 No organization should expect to raise funds through unpaid subsidy by artists' work.
- 1.3 Written agreements or contracts must be used.
- 1.4 If an artist chooses to donate artwork as part of contributing to a community, they should be aware of Canada Revenue Agency (CRA) regulations regarding charitable donations. See section 2, below. As the donation of artwork may not be in the artist's best interests financially, the artist may be advised to consider a monetary donation instead.

2 ART DONATED FOR CHARITY - CANADA REVENUE AGENCY

- 2.1 If an artist donates a work to a registered charity, to a federal, provincial, or municipal government, to a public gallery or other institution, or to another person as a gift, certain CRA regulations apply.
- 2.2 It is the responsibility of the organizer to apply these regulations appropriately, but both artist and organizer should take tax advice from a specialist.
- 2.3 If an artwork is donated to a registered charity or a government in Canada it must be given a value. The value must be an amount not higher than the work's fair market value and not lower than its cost. This amount becomes the *proceeds of disposition*, and is used to determine *capital gain or income*.
- 2.4 Prior to acceptance of a donated artwork, a written appraisal may be required to provide evidence of fair market value. Any responsibility and cost associated with an appraisal should be negotiated between the artist and fundraiser, in writing. The CRA may audit an artist's tax return to substantiate the facts surrounding a charitable donation receipt.
- 2.5 Only registered charities (and in some instances government agencies) may provide a charitable donation receipt when artwork is donated. Charitable receipts must reflect fair market value. This type of donation is dealt with by CRA in the same way as any other charitable donation, using the information provided in the Federal Income Tax and Benefit Guide.
- 2.6 Under current CRA regulations, when an artist creates a work of art with the intention of selling it but instead donates it, the donation is considered to be a disposition of property from the artist's inventory. *Disposition of property by the artist from inventory* - the value of the work as described in a charitable donation receipt – currently *must be treated as income by the artist. It is in the artist's best interest to carefully consider the value of work chosen*.
- 2.7 None of the information in this section is offered as tax advice. For any tax questions a

specialist should be consulted.

3 PROCEEDS RETURNED TO THE ARTIST

- 3.1 Compensation to artists for the sale of their work for fundraising purposes should be guided by industry standards for other commercial sales of artwork. It is recommended that the artist should retain a portion of the sale price, to be negotiated in advance and agreed in writing.
- 3.2 Any commissions payable to commercial galleries for the sale of artists' work for fundraising purposes should be negotiated between artist and gallery in advance and be clearly stated in the documentation for the work.
- 3.3 Artwork should not be sold for fundraising purposes at below market value. Normally, the artist will establish a reserve (minimum) price below which the artist reserves the right not to sell the work, and this should be agreed in advance in writing.

4 ARTISTS' RESPONSIBILITIES

- 4.1 The artist should provide all information required by the exhibition prospectus and donation forms, including insurance value and reserve price.
- 4.2 The artist should guarantee that the work is original if it is stated to be so.
- 4.3 The artist should guarantee that they have the right to sell the work.

5 ORGANIZERS' RESPONSIBILITIES

- 5.1 The organizer should make available a prospectus for the fundraising event well in advance of the deadline for submissions, including complete information on terms, criteria for selection (if juried), deadlines, responsibility for framing, and dates by which work will be returned and payment made. The prospectus should also state clearly what the organizers' intentions are in regard to providing tax-deductible receipts.
- 5.2 It is the organizer's responsibility to insure the work at full value as stated by the artist. The organizer should undertake to protect the artist's intellectual property on all works submitted and to inform all purchasers that the purchase of work does not constitute purchase of copyright.
- 5.3 All forms of reproduction or use of the artist's work, in any form or in any media, must clearly attribute the artist and must respect the artist's moral rights under the Copyright Act. (Moral rights generally include the rights of the artist: to be identified as the creator of the work; to prevent distortion or alteration of the work; to prevent association with a cause, product, service, or institution that the artist does not endorse).

- 5.4 The organizer should return all unsold artwork to the artist and deliver all receipts to the artist within the time frame stipulated in the written donation agreement/prospectus. The organizer should also provide a statement of the amount received for work, and a copy of all published information relating to the event.
- 5.5 The organizer should assume all costs related to the event, including insurance, publicity, provision of financial statements, and published information.

6 DELIVERY AND CONDITION OF ARTWORK

- 6.1 Hand deliveries of artwork are acceptable.
- 6.2 The artist should prepare a written condition report before work leaves the artist: photographs are recommended.
- 6.3 Work should be inspected for damage by the fundraisers upon delivery. A written condition report should be completed and shared with the artist: photographs are recommended.
- 6.4 The artist must be notified immediately if work is received in damaged condition. If shipped work is received in damaged containers, such damaged items should be returned to the artist prepaid pending claims on the insurer, or the organizer may, with the artist's permission, unpack the damaged container with the understanding that no claims for damage to work will be made against the organizer for the unpacking.
- 6.5 The organizer is responsible for maintaining the artwork in the condition received.
- 6.6 Unsold artwork should be returned to the artist in packaging comparable to that in which it was originally delivered.

7 DISPLAY OF ARTWORK

- 7.1 Artwork should be treated with respect and displayed professionally.

8 NO REMOVAL OF ARTWORK

- 8.1 Neither the artist nor the organizer should remove the artwork during the exhibition or auction without the explicit and written agreement of the other.

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