

EXHIBITING IN A COMMERCIAL GALLERY

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 partners when exhibiting in a commercial gallery. This is a living document and will be revised and updated based upon ongoing input from stakeholders.

Professional commercial art galleries all have one characteristic in common: they are in business, and their business is the sale of art. No matter how dedicated, professional and/or sympathetic, the gallery is in business to stay in business, preferably to make a profit.

This means that the artists' work must be saleable. It does not mean that either party should assume that one has an advantage over the other. It does mean that a seller/supplier relationship exists and that this relationship will normally be most successful when it is professionally maintained.

The relationship between artist and commercial gallery works best when it is open, realistic, and carried out as a matter of business.

As with all relationships, effort is required from both parties. Many problems occur because of assumptions made, uncertainties not clarified, or questions not asked. Artists must think about what is expected, about who is responsible for what, and about what could go wrong. Both gallery and artist should remember that each supplies a valuable commodity and/or service to the other. Both parties should make sure that their expectations and requirements are understood.

The most common selling arrangement between visual artists and commercial galleries is *consignment*. This means that the gallery is not the owner of the artwork it is selling, but sells the work as the agent of the artist.

If there is a reason why rights and responsibilities outlined in this document need to be changed, they should be negotiated and agreed to in writing by both artist and gallery.

Artists' Fees (Exhibition Royalty Fees) are not generally paid to artists whose works are exhibited by commercial galleries solely for the purpose of sale. However, Professional Fees and Copyright / Reproduction Royalties should be paid. The CARFAC – RAAV Minimum Recommended Fee Schedule indicates categories.

1 BASIS FOR RELATIONSHIP

- 1.1 Artists and commercial galleries (and art dealers) should be clear when establishing a relationship, that its purpose is the successful selling of artwork. However, while selling generally takes place inside or otherwise in the context of the gallery, other artistic ventures by the artist generally add to the salability of the artist's work. These may include, but are not limited to, public gallery exhibitions, non-commercial artwork, promotional activities, and relationships with other dealers (e.g. sales) outside the territory agreed upon between gallery and artist at the outset of the relationship (see section 5). Commercial galleries should plan to support such ventures, to the extent of their resources for doing so allows.
- 1.2 Relationships between artists and commercial galleries are the most successful when they are long-term. Both parties should address needs of the relationship as they arise, in order to maintain such long-term relationships.
- 1.3 Relationships between artists and commercial galleries are most successful when it is clear that trust is inherent in the relationship. Both parties should address needs of the relationship as they arise, in order to maintain such trust.
- 1.4 The artist should not disclose the gallery's client list to any other party.
- 1.5 When the artist is invited to exhibit in another venue, whether or not commercial, the artist should make the gallery aware of this.
- 1.6 The artist should credit the gallery when their work is exhibited in another venue, within the established territory of representation of the gallery (see section 5) except when that exhibition is initiated by one of the artist's other commercial dealers.
- 1.7 The artist represented by a gallery should not undermine or compromise their relationship with the gallery by attempting to establish an independent business relationship with clients.
- 1.8 Marketing initiatives, including online and social media presence, should credit both parties.
- 1.9 Few artist/gallery relationships are entered into for a predetermined period (although this may differ with a dealer). If there is a pre-determined time period, this should become part of the written agreement (see section 2). Otherwise, the professional relationship can be terminated by either party giving reasonable notice. It is best that a definition of reasonable notice be included in the written agreement.
- 1.10 Both the artist and gallery should assess their professional relationship from time to time.
- 1.11 Both the artist and gallery should maintain communication and inform each other of any changes of contact information and addresses.

2 WRITTEN AGREEMENTS

- 2.1 The commercial terms of the relationship between artist and gallery should be agreed to in writing, in a contract or formal letter of agreement or in any other media. This agreement should be detailed and include all of the elements listed in this document. Both parties should sign this agreement and retain a copy.
- 2.2 This agreement should list the expectations of both parties and specify any respects in which they agree to vary the terms of the agreement.
- 2.3 Where the gallery does not offer a letter of agreement or formal contract, negotiation of terms should not be neglected. The parties may use this best practices document as a checklist for that purpose. At the least, a consignment agreement for all work that the artist deposits with the gallery, and an agreement for sale of individual works, should be used (see sections 8 & 10).

3 SERVICES TO THE ARTIST

- 3.1 While the principal service to the artist by the gallery is selling the artist's work, gallery representation may also include the services below:
 - a) holding regular in-house exhibitions
 - b) producing and distributing invitations, hosting receptions, carrying out promotion of exhibitions
 - c) maintaining an artist's curriculum vitae for each artist represented
 - d) maintaining current visual material for promotional purposes for each artist represented
 - e) maintaining an archive of promotional activities
 - f) pursuing sales outside the gallery in the public and private sector
 - g) cultivating collectors and corporate clients protecting the artist's legal rights, including copyrights, in activities relating to art work consigned to, sold through, or promoted by the gallery (see section 13)
 - h) collaborating with the artist on competition, grant, and commission submissions prepared by the gallery
 - i) recording of all works left on consignment, on approval, on loan, and sold

- 3.2 This list is meant to be an indicator of core services a gallery may provide in representing the artist. It is not exhaustive, nor will all galleries provide all services.

4 FREQUENCY OF EXHIBITIONS

- 4.1 The artist should be able to expect to have their work exhibited on a regular basis.
- 4.2 The gallery and artist should agree on the frequency of exhibitions and any special exhibitions or solo shows.
- 4.3 To facilitate successful exhibition of their work, the artist should deliver, (and in some cases, collect), the agreed work to the gallery in good order and good time.

5 TERRITORY OF REPRESENTATION

- 5.1 The gallery and the artist should together negotiate any exclusive representation. Exclusivity may include but not be limited to territory, method of sales, and means of communication.
- 5.2 The gallery should not expect its area of exclusivity to exceed its true territory of operations.
- 5.3 The gallery should be able to substantiate any claim for exclusivity.
- 5.4 Where no written and precise exclusivity agreement is signed none should be presumed to exist.

6 PRICING

- 6.1 The gallery and artist should jointly agree on the retail price of the artwork. All prices quoted by the gallery should be exclusive of any taxes or royalties.
- 6.2 Once prices are established they should remain consistent in all jurisdictions. In the interests of both parties, undercutting established prices or raising them in one location and not another is not recommended. These practices undermine the value of the artist's work and are a potential source of discord between artist and gallery.
- 6.3 The gallery and the artist should from time to time discuss price increases for the artist's work, as the value of the work increases.

7 GALLERY COMMISSION

- 7.1 Commission on sales is payment by the artist for the gallery's continuing work and representation. It is earned by the gallery for the type of services listed under section 3 and is paid to the gallery when the artist's work is sold. Commission should be negotiated at the

outset by the parties involved, and should be stated in the written agreement.

- 7.2 Gallery commission should reflect the type of service (see Section 3.1) provided by the gallery, and is usually between 40% and 50% of the price of the artwork. Commission is paid by the artist on retail price only, not on GST, royalties or fees.
- 7.3 Galleries should not increase sales commissions as a way of defraying increased expenses. Increased expenses should instead be defrayed by an increase in prices, as is the case in other business and industry sectors.
- 7.4 "Selling out the studio door" (the artist making unacknowledged personal sales inside the agreed territory of exclusivity) will always be a source of discord between artist and commercial gallery and is not recommended.
- 7.5 With a commissioned artwork, due to the artist's greater involvement with the client, a lower-than-standard gallery sales commission may apply. This rate and the roles of all parties involved (including but not limited to client liaison, documentation, supervision, insurance, transportation, framing, installation, etc.) should be negotiated prior to the start of a commissioned project, and be detailed in a written agreement.
- 7.6 The gallery's fees for any services other than sales, such as rental of the artist's work, negotiations for commissioned artwork, or any other services, should be agreed to by artist and gallery in advance, and be detailed in the written agreement .
- 7.7 Where other agencies or galleries have been involved in the sale of an artist's work, the total of the sales commission should remain the same as it would have been had the primary gallery been the only agency involved. By prior written agreement, sales commission should be split between agencies so the artist receives their full share of the retail value.
- 7.8 In case of the artist entering works into art awards, prizes, competitions, or acquisitional exhibitions, the artist should ensure that the gallery will be credited for all works currently consigned to the gallery.
- 7.9 Gallery sales commissions should be collected only on works consigned to or sold by the gallery, and on commissioned works negotiated by the gallery on behalf of the artist. In the case where the artist receives a grant, award, or cash prize, the commercial dealer should have no expectation of commission.
- 7.10 The artist and gallery should discuss whether sales commission will be paid to the gallery on donations, or sales of artwork at fundraising events. For auctions, the gallery and artist should jointly agree on a reserve price (an acceptable minimum bid) to ensure that the value of the artist's work is not undermined.
- 7.11 The artist and gallery should jointly agree on the rate of commission to be paid on all other types of special transactions (see Section 7.6).

8 CONSIGNMENT

- 8.1 A consignment relationship means that when the artist deposits artworks with the gallery, the artist retains ownership until the works are sold. When artwork is sold, the artist is entitled to full price less gallery commission and any applicable taxes (see section 12).
- 8.2 When the artist deposits works with the gallery, the artist should also deposit two copies of a full descriptive list of works. The gallery should check this consignment list against the works. The gallery and artist should both sign both copies of the consignment agreement, and both parties should retain a copy. Where the artist does not prepare a consignment agreement, the gallery should do so. (see sections 2.3, 3.1, 7.5 & 7.6)
- 8.3 By accepting the artist's work on consignment, the gallery agrees to statements made on the consignment sheet and acknowledges that the work was in good condition when received.
- 8.4 Consigned artworks are not the property of the gallery and may not be included in any possible sale or transfer of the gallery business.
- 8.5 If the commercial gallery or business becomes insolvent, the contract and consignment inventory list are the artist's proof of ownership, so their work does not become a part of the bankruptcy proceedings or owned by a third party. The artist's work should be returned to the artist.

9 DISCOUNTS

- 9.1 The gallery has an obligation to the artist and to the artist's work to represent the work as fully as possible and to best advantage and not to undermine the value of the work.
- 9.2 If a gallery gives discounts, any resulting reduction in profit should be taken from the gallery's commission, not the artist's return, unless there is joint written agreement to the contrary.

10 SALES, CREDIT, AND RETURNS

- 10.1 A written agreement for sale should be used by the gallery for the sale of all works. It should include all terms of the sale.
- 10.2 Payment to the artist should be made within at least 60 days of the sale, or within payment being received by the gallery, whichever is sooner.
- 10.3 Where the gallery accepts installment payments, a minimum deposit of 25% should be made.
- 10.4 The first installment payment made on a work will include any taxes (GST and/or PST) to be remitted to the Canada Revenue Agency. Subsequent installment payments should first be paid to the artist, until the artist's portion of retail sale price has been fully paid. Final installment payments will be used to pay the gallery's commission.

- 10.5 Credit extended should be entirely at the gallery's own risk.
- 10.6 If a gallery agrees to accept return of sold work, this should be solely at the gallery's expense.
- 10.7 On request, the gallery should provide the artist with a statement of progress of purchases, and any installment payments due or received.
- 10.8 The gallery is required to provide a statement of account to the artist for individual works with every payment to the artist, including details of purchasers.
- 10.9 It is a breach of the representation agreement for the artist to seek direct sales from purchasers without the payment of commission.
- 10.10 The gallery may agree to "reserve" a work for a client (but for no longer than the period stipulated in the agreement between the gallery and the artist), and undertake to contact that client before selling the work to someone else.

11 EXHIBITION ARRANGEMENTS AND COSTS

- 11.1 The gallery and artist should agree on frequency and timing of exhibitions, as well as on whether these will be solo or group exhibitions.
- 11.2 The gallery and the artist should agree in advance who will pay for exhibition costs e.g. framing, transportation of works, documentation of works, promotion, advertising, reception costs, etc.
- 11.3 The gallery and artist should agree on whether commission is based on framed or unframed price of works.

12 GOODS AND SERVICES TAX

- 12.1 Where the artist is registered for GST, the artist must supply the gallery with their business number.
- 12.2 Both galleries and artists should educate themselves about the implications of the tax system for their businesses, and regularly update their knowledge.
- 12.3 The decision whether to register for GST should be made by the artist and their tax advisor.
- 12.4 Whether the artist is registered for GST or not, if the gallery is registered, the gallery will collect full GST on the work. If the artist is registered, the gallery should forward to the artist their percentage share of GST collected. Both parties will remit GST to Canada Revenue Agency according to their legal obligations.

13 COPYRIGHT

- 13.1 The gallery is responsible to protect the artist's legal rights, including copyrights, in activities relating to work consigned to, sold through, or promoted by the gallery, and should take reasonable steps to ensure that others do also.
- 13.2 The gallery should not influence the artist to sell, license, or waive his/her copyright.
- 13.3 The artist's copyright may be managed by the artist, or by a copyright collective to which the artist has assigned copyright for that purpose. A copyright collective can greatly simplify and streamline copyright agreements or licensing for both parties. For further information consult the website for Copyright Visual Arts (cova-daav.ca).
- 13.4 Generally, the artist retains the right to exercise their own copyright even where another agency manages their copyright.
- 13.5 Moral rights are inherent in copyright. Moral rights may not be sold or licensed, though the artist may choose not to exercise them. Moral rights are defined in the Copyright Act and include:
- a) the right of attribution (including the artist's name with the work)
 - b) the right of integrity (to prevent intentional distortion, mutilation)
 - c) the right of association (to prevent the work's association with a product, service, cause or institution the artist does not support)
- 13.6 The gallery should take particular care not to infringe the artist's moral right, particularly in the gallery's marketing and advertising initiatives. For example, the gallery should not crop, distort or superimpose text over reproductions of the artist's works without the artist's express written permission.
- 13.7 The artist should be informed when and if their work is being advertised or reproduced. The gallery should consult with the artist before advertising or using any reproduction of an artist's work within a setting that may contravene an artist's moral rights.
- 13.8 The gallery should not be expected to pay copyright fees for promotional reproduction of the artist's work, where the purpose of reproduction (e.g. advertising) is to sell the artist's work.
- 13.9 If the gallery wishes to market goods of any other sort *for sale* bearing images of the artist's work, the artist is entitled to a copyright fee for reproduction, based on the type of merchandise and number of images, as per the CARFAC - RAAV Minimum Recommended Fee Schedule. This use and the associated fees should be agreed to in a separate written contract.

14 DUTY OF CARE & INSURANCE

- 14.1 The gallery has responsibility for the artist's work while it is in the gallery's care, and should exercise all reasonable diligence when handling, storing, displaying, packing and shipping the work.
- 14.2 The gallery is responsible for maintaining suitable insurance. Types of insurance provided should be outlined to the artist in writing, as should the process that will be followed where work is lost, damaged, or stolen while in the gallery's care. The insurance deductible should be the responsibility of the gallery, not the artist.
- 14.3 If the gallery does not provide insurance, the artist should be informed in writing.
- 14.4 The gallery is also responsible for security, fire prevention, and environmental conditions including display and lighting.
- 14.5 If a work is damaged while in the gallery's care, the artist should be given the first option to repair the work or approve the choice of conservator. The gallery should cover costs of repair.
- 14.6 If loss or damage is such that the work cannot satisfactorily be repaired, the artist should be paid the agreed commission fee for the work within a reasonable period of time regardless of the gallery's level of insurance or time taken to settle the claim.

15 DISPUTE

- 15.1 In case of any dispute over breaches of contract, mediation should be sought before legal action is commenced.

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