

Saskatchewan Commercial Galleries & Artists



Commercial galleries vary in professionalism, status, type and quality of artwork sold, reputation of artists represented, volume of sales, price range, skills of the operator(s) – there are as many variables as there are galleries and people who run them and exhibit in them. However, all professional dealers 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 dealer is in business to stay in business, preferably to make a profit. This means that the artists' work which the dealer exhibits must sell. 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 the relationship will normally be most successful when it is professionally maintained.

The relationship between artist and commercial dealer 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 dealer 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.

This document sets out recommended standards for professional practice in the Saskatchewan visual arts and crafts sector.

The following organizations have endorsed this document:

- » CARFAC Saskatchewan
- » Museums Association of Saskatchewan
- » Organization of Saskatchewan Arts Councils
- » Saskatchewan Arts Alliance
- » Saskatchewan Arts Board
- » Saskatchewan Craft Council
- » Saskatchewan Cultural Industries Development Council
- » Saskatchewan Professional Art Galleries Association
- » Saskatchewan Publishers Group
- » SaskCulture

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More best practice standards at www.bestpracticestandards.ca

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This project has been devised based on the "The Code of Practice for the Australian Visual Arts and Craft Sector" Edition 2, developed, commissioned and published by the National Association for the Visual Arts (NAVA).

1 BASIS FOR RELATIONSHIP

- 1.1 Artists and commercial galleries/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, directly promotional activities, and sales relationships with other dealers outside the territory agreed to 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.
- 1.2 Galleries should expect to exhibit and sell the artist's work on a regular basis within the gallery space. Artists should expect to supply work on a regular basis.
- 1.3 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.
- 1.4 Relationships between artists and commercial galleries are most successful when there 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.
- 1.5 The artist should not disclose the gallery's client list to any other party.

- 1.6 When the artist is invited to exhibit in another venue, the artist should make the gallery aware of this.
- 1.7 The artist should credit the gallery when his/her work is exhibited in another venue, except when that exhibition is initiated by one of the artist's other commercial dealers.
- 1.8 The artist represented by a gallery should not undermine or compromise his or her relationship with the gallery by attempting to establish an independent business relationship with clients.
- 1.9 Few artist/dealer relationships are entered into for a predetermined period. If they are, 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 The parties should assess their professional relationship from time to time.

2 WRITTEN AGREEMENTS

- 2.1 The commercial terms of the relationship between artist and gallery should be agreed to in writing.
- 2.2 Written contracts must be used. The Saskatchewan Arts Professions Act requires a written contract between artists and engagers. The contract must include specific basic elements which are detailed in the Checklist For Written Contracts, provided by the Ministry of Tourism, Parks, Culture and Sport and appended to this document.

- 2.3 This agreement should list the expectations of both parties and specify any respects in which they agree to vary the terms of this document.
- 2.4 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 Document as a checklist for that purpose. At the least, a consignment agreement for all work 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.
 - Holding regular in-house exhibitions
 - Producing and distributing invitations, hosting receptions, carrying out promotion of exhibitions
 - Maintaining an artist's curriculum vitae for each artist represented
 - Maintaining current visual material for promotional purposes for each artist represented
 - Maintaining an archive of promotional activities
 - Pursuing sales outside the gallery in the public and private sector
 - 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)
 - Collaborating with the artist on competition, grant, and commission submissions prepared by the gallery

- 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 gallery and artist should agree on the frequency of exhibitions.
- 4.2 Where the gallery normally offers solo exhibitions, the artist should be able to expect exhibitions on a regular basis. Artist and gallery should discuss timelines.
- 4.3 Where the gallery does not offer solo exhibitions, the artist should be able to expect that a representative sample of his/her work is exhibited on a regular basis.
- 4.4 To facilitate successful exhibition of his/her 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 (GST and PST).
- 6.2 Once prices are established they should remain established 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 by the parties involved at the outset 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 40% - 50% of the price of the artwork. Commission is paid by the artist on retail price only, not on GST and PST.
- 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 Due to the artist's greater involvement with the client on commissioned artwork, 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 the project.
- 7.6 The gallery's fees for any services other than sales, such as rental of the artist's work, negotiations for commissions of artwork, or any other services, should be agreed to by artist and gallery in advance.
- 7.7 Where other agencies or galleries have been involved in the sale of an artist's work, the total of the commission should remain the same as it would have been had the primary gallery been the only agency involved. By prior agreement, commission should be split between agencies so the artist receives his/her full share of the retail value.
- 7.8 In case of the artist entering prizes competitions, art awards, or acquisitive exhibitions, the artist should ensure that the gallery will be credited for all works currently consigned to the gallery.
- 7.9 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 commission will be paid to the gallery on donations to or sales of artwork at fundraising events. The gallery and artist should jointly agree on a reserve price 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.

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.
- 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.
- 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.

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 reduction in profit should be taken from the gallery's commission, not the artist's return.

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 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 GST and/or PST to be remitted to 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 Where the gallery agrees to accept the return of sold artwork, this should be entirely 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 should provide a statement of account to the artist for individual works with every payment to the artist, including details or purchasers. It is a breach of the representation agreement for the artist to seek direct sales from purchasers so named without the payment of commission.
- 10.9 The gallery may agree to "reserve" a work for an agreed period for a client, 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 (for example, 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 his/her 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 his/her 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 his/her 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 should protect the artist's legal rights, including copyrights, in activities relating to art work consigned to, sold through, or promoted by the gallery, and should take reasonable steps to ensure that others do also.

13.2 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.

13.3 Moral right is inherent in copyright. Moral right may not be sold or licensed, though the artist may choose not to exercise it.

13.4 The gallery should not influence the artist to sell, license, or waive his/her copyright.

13.5 Generally the artist retains the right to exercise his/her own copyright even where another agency manages his/her copyright.

13.6 The gallery should not be expected to pay copyright fees for reproduction of the artist's work where the purpose of reproduction is to sell the artist's work.

14 DUTY OF CARE

14.1 The gallery has responsibility for the artist's work while it is in the gallery's care.

14.2 The gallery should exercise all reasonable diligence when handling, storing, displaying, and packing the work.

14.3 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.

14.4 Artist and gallery should be clear about what the gallery's insurance policy covers if work is lost, damaged, or stolen.

14.5 If the gallery does not provide insurance, the artist should be informed in writing.

14.6 The gallery is also responsible for security, fire prevention, and environmental conditions including display and lighting.

14.7 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.

14.8 If loss or damage is such that the work cannot satisfactorily be repaired, the artist should be paid 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.

CHECK LIST FOR WRITTEN CONTRACTS

provided by the Saskatchewan Ministry of Tourism, Parks, Culture & Sport (2009-06)

www.tpcs.gov.sk.ca/arts-professions-act

The *Arts Professions Act* increases protection for artists and their intellectual property by requiring written contracts between those who engage the services of artists and the artists themselves. The legislation requires the following basic elements be included in each contract:

- the legal names of the engager and the professional artist;
- the effective date of the contract;
- the work, production or enterprise that forms the object of the contract;
- the financial consideration due to the professional artist and the terms and conditions of payment, including the date of the delivery of the work or production or the conduct of the enterprise and the date of the delivery of payment;
- the frequency with which the engager shall report to the professional artist on the transactions made with respect to the work, production or enterprise that is subject to the contract and for which financial consideration remains owing after the contract is entered into;
- the notice and, if applicable, the compensation required if either the engager or the professional artist terminates the contract before its completion;
- dispute resolution mechanisms;
- any transfer of right and any grant of licence consented to by the professional artist, including:
 - a. the purposes of the transfer of right or grant of licence;
 - b. the term of the transfer of right or grant of licence; and
 - c. the jurisdiction in which the transfer of right or grant of licence applies;
- whether any licence granted to an engager is transferable to a third party;
- any limitations on the use of the work or production or the conduct of the enterprise.
- if applicable, any waiver of moral rights within the meaning of section 14.1 of *The Copyright Act (Canada)*; and
- in the case of a contract between an engager and an Aboriginal professional artist, the protocols respecting the use of Aboriginal symbols or artifacts or matters of importance to Aboriginal people.

ADDITIONAL CHECK LIST FOR WRITTEN CONTRACTS

If a written contract entered into reserves an exclusive right of the engager over any future use of the work or production of the professional artist, the contract must include the following elements in addition to the elements listed above:

- a description of the work or production;
- a description of the process that the professional artist must follow to terminate the contract after the expiration of a specified period;
- a date on which any exclusive right of the engager over any future use of the work or production of the professional artist or any right of the engager to the work or production expires; and
- any additional elements prescribed in the regulations (at this time there are none).