

Saskatchewan Public Galleries & Artists



Public galleries are not-for-profit galleries that receive the major part of their funding from local, provincial, and/or federal government sources and are committed to collecting, conserving, exhibiting, and/or promoting art in the public interest.

Public galleries include national, provincial, regional, and municipal galleries as well as artists' centres. A small number of privately-funded galleries operate like public galleries, with the purpose of exhibiting rather than sales. Best practices should be followed by all public galleries, galleries operating like public galleries and the artists who exhibit therein.

A wide diversity of practice exists in Saskatchewan in the relationship between artists and public galleries. Practice related to the structure and timing of exhibitions also varies. Some public galleries purchase and/or sell artwork and some do not.

The relationship between the artist and the gallery is a professional one and a business contract. It should be conducted as such. The relationship will normally be most successful when it is professionally maintained. The standards outlined in this Best Practice document should facilitate such maintenance.

Selling art for revenue moves public galleries into commercial galleries' realm of practice and should incorporate Industry Standards/Best Practices set out in the Commercial Galleries and Artists document. Any existing relationship between the artist and a commercial gallery should be respected by both the public gallery and the artist.

The process of developing an exhibition will involve formal or informal conversations. Either party may initiate the discussion. A studio visit may be involved. When agreement on exhibition is reached in principle, the process continues with both parties negotiating exhibition dates, spaces, equipment, etc. It is important

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

PROJECT FUNDING



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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).

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for the artist and the gallery to know the roles, responsibilities and limitations of each party.

Written contracts and agreements should be the end result of negotiations and are necessary to a successful relationship between artist and public gallery. However, use of contracts varies in Saskatchewan, as does their form. Contracts should be clear and should address all aspects of exhibition, as described in this document.

The Copyright Act of Canada requires protection of the artist's copyright.

The Exhibition Right in Canada is part of The Copyright Act. It recognizes the artist's right to be financially compensated for use of his or her work. The payment of exhibition fees to artists for public exhibition of the artist's work is a legal requirement of public exhibition of artists' works produced after 1988.

Moral right is also part of The Copyright Act.

Protection of artists' copyright, exhibition right, and moral right is the responsibility of both artist and public gallery.

Duty of care as well as maintenance of institutional policies in the case of loss, damage, or theft is part of a public gallery's required diligence.

Acquisition of artwork (addition into the gallery's collection) should be handled professionally. There should not be undue expectations that the artist will provide a discount, unreasonably shoulder the risk of the failure of a proposed purchase to proceed, and/or provide the gallery with automatic right to any purchase of artwork.

Deaccessioning of artwork (removal from the gallery's collection) should be avoided. If it is necessary, it should be carried out in accordance with the institution's written policies. These should include right of first refusal by the artist.

This document provides detailed guidelines and expectations for all considerations listed above.

1 BASIS FOR RELATIONSHIP

- 1.1 The primary purposes of the public gallery are exhibiting, collecting, public programming, education, and conservation of works of art. Though the gallery may also be involved in sales through related retail outlets, and sales to the public of works on temporary exhibition, its primary purpose is not-for-profit.
- 1.2 The temporary nature of most public gallery exhibitions influences the relationship between gallery and artist, which is likely to be temporary also. As such, it should be governed by negotiated and written agreements.
- 1.3 All public gallery practices should be subject to Industry Standards/ Best Practices.
- 1.4 The public gallery is responsible to respect the artist's legal rights including copyright and moral right. (See section 9)
- 1.5 The payment of exhibition fees is established by Canadian copyright law and should not be circumvented. (See section 4)

2 CONTRACTS & AGREEMENTS

- 2.1 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.

- 2.2 Public galleries should offer exhibition contracts to artists whose work they plan to exhibit, purchase, or sell. These contracts should include all terms of the exhibition/purchase/sale.
- 2.3 The above notwithstanding, not all galleries and exhibition venues use standard contracts. Even where a standard exhibition contract exists, the gallery may not have a standard practice of offering it to the artist.
- 2.4 Such lack should not prevent the negotiation and recording of contract terms. As well, the artist may negotiate terms that are omitted or onerous even if a standard form contract is presented. The artist should also raise any issues that s/he thinks necessary.
- 2.5 Where no contract is available from or offered by the gallery, either party may record the terms agreed to in writing and provide the other party with a signed copy.
- 2.6 By accepting the artist's written terms of agreement, the gallery may be considered to have acknowledged that the terms have been negotiated and agreed to by both parties.
- 2.7 In addition to best practices described in all sections following, considerations for contracts include:
- Location of exhibition;
 - Selection and installation of artwork;
 - Transportation of artwork;
 - Touring of exhibition, including transportation, storage, installation, etc.;
 - Presentation requirements (framing, construction, display units, technical equipment, personnel, etc.)

2.8 Other considerations for inclusion in contracts are described in the following sections.

3 EXHIBITION COSTS

- 3.1 The gallery should cover all costs of the exhibition including promotional costs, opening and other receptions, transportation of work, and exhibition installation. How these costs are arrived at should be negotiated.
- 3.2 Any costs to the artist should be negotiated by the artist and the gallery in advance and be recorded as part of the contract or written agreement.
- 3.3 Notwithstanding 3.1, artists may be asked to cover some costs:
- Late changes requested by the artist to a catalogue or other publication;
 - Printed invitations which differ from the gallery standard;
 - Artists' materials including equipment and technology;
 - One-way transportation of artwork.

4 EXHIBITION FEES

- 4.1 According to Canadian copyright legislation, artists in Canada are entitled to be paid exhibition fees for use of their work by public exhibition spaces, when the exhibition is not for purposes of sale or hire and when the work was produced after June 8, 1988. Many public galleries also pay exhibition fees to artists for work produced before that date. (*See also section 9*)
- 4.2 The CARFAC/RAAV Minimum Fee Schedule provides recommended minimum payment schedules for exhibition, reproduction, advertising, commercial and professional fees. Schedules cover all types of public exhibition; audio-visual and

print reproduction; exhibition and reproduction fees for commercial and advertising purposes; and fees for artists' professional presentation and consultation, installation, and preparation. These schedules should be used by artist and gallery as minimum fee expectations.

In 2007 a five year fee schedule for exhibition fees was negotiated among CARFAC, RAAV (le Regroupement des artistes en arts visuels du Quebec), CAMDO (Canadian Art Museum Directors' Organization), and CMA (Canadian Museums Association). This fee schedule applies to all public galleries.

5 TIMELINES

- 5.1 Artist and gallery should negotiate and agree to timelines for exhibitions, including:
- Due date for final list of works to be included in the exhibition;
 - Due date for promotional and catalogue materials;
 - Dates for payment;
 - Exhibition opening and promotion and any other related events;
 - Time available for installation;
 - Length of exhibition;
 - For time-based works, duration of the work, frequency, timing, and public notification of timing.

6 ARTIST OBLIGATIONS

- 6.1 The artist should deliver the agreed work in good condition to the gallery at the agreed time, with due consideration for packaging and presentation.
- 6.2 The artist should make sure the gallery has information necessary to correctly install the work.

6.3 The artist should provide the gallery with a full descriptive list of works in the exhibition including titles, date, dimensions, insurance value based on fair market value, condition, and other information as necessary. This list should be checked by the gallery against the works, signed, and a copy returned to the artist.

6.4 The artist should provide accurate biographical information to the gallery.

6.5 Artist and gallery should consult on health/safety implications of the work, if any.

7 PROMOTION

7.1 Prior to the exhibition, the artist and gallery should agree on the extent and nature of promotional activity to be taken by the gallery; the extent of the artist's input to and participation in such promotion; such as images for promotional purposes, and whether the artist will receive copies of the gallery's promotion and documentation materials.

8 DOCUMENTATION

8.1 The gallery should produce and keep a visual record of the installed exhibition. The artist may contribute to this process.

9 COPYRIGHT

9.1 In Canada, copyright in the artist's work belongs to the artist, unless the artist has agreed in writing to sell, license, or waive copyright. This includes reproduction by the gallery, even for the purpose of selling the artist's work. The gallery should obtain written licenses from the artist for all uses of the artist's copyrights.

9.2 According to Canadian copyright legislation, artists in Canada are entitled to be paid exhibition fees for use of their work by public exhibition spaces, when the exhibition is not for purposes of sale or hire and when the work was produced after June 8, 1988. Practice dictates that artists are also paid exhibition fees for work produced before that date. (See also section 4)

9.3 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.

9.4 The artist's copyright may be managed by the artist or the artist's agent, or by a copyright collective to which the artist has assigned copyright for that purpose. If an agency other than the artist manages the artist's copyright, the gallery may need to obtain a license to exhibit the work. Where another agency manages the artist's copyright, it is the artist's responsibility to inform the gallery in a timely manner of the requirement for obtaining appropriate licenses for exhibition and reproduction.

9.5 The gallery is required to obtain an appropriate license from the copyright holder in order to reproduce images. If the gallery decides to reproduce images once the license has been obtained, the artist should be informed.

9.6 The artist's moral right is inherent in his/her copyright and must be respected by the gallery. Moral right may not be sold or licensed, though the artist may choose not to exercise it.

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

10 DUTY OF CARE

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

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

10.3 The gallery is responsible for maintaining suitable insurance. Types of and coverage by insurance provided should be described to the artist or owner of the work in writing, as should the process that will be followed where work is damaged while in the gallery's care.

10.4 The gallery is responsible for incoming and outgoing condition reports.

10.5 If the gallery fails to provide insurance, the artist or owner of the work should be informed in writing.

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

10.7 If access to the work as described in section 2 requires technical equipment, personnel, or any special conditions, it is the gallery's responsibility to make sure these are available. If problems occur, the gallery is responsible to notify the artist and deal with these promptly.

10.8 Where the work is ephemeral (e.g. temporary in nature or self-destructing), responsibility for retention or disposal of the elements of the work should be agreed by the artist and the gallery prior to the exhibition.

11 ACQUISITION OF ARTISTS' WORK

- 11.1 Where a public gallery collects artists' work as part of its mandate, the gallery should have formal acquisitions policies in place. These should include mandate, process, authority, and conditions of purchase, as well those terms in the following sections.
- 11.2 Acquisitions policies should not include pro forma acquisition of the artist's copyright.
- 11.3 Acquisitions policies should also consider the process for de-accessioning of artists' work. (See also section 12)
- 11.4 Acquisitions policies should endeavour to keep time frames for the acquisitions process to a reasonable minimum, e.g. so that the artist does not run undue risk of an eventual non-sale.
- 11.5 It is the gallery's responsibility to keep the artist and/or his/her commercial dealer (as applicable) informed regarding progress during the process of acquisition.

12 DEACCESSIONING

- 12.1 Deaccessioning of work in a public collection by a living artist should be avoided.
- 12.2 Where deaccessioning is deemed to be unavoidable, the artist should be informed of the decision and the gallery's policy.
- 12.3 The artist should be offered right of first refusal in the event of deaccessioning of the artist's work by a public institution.

13 SALES OF ARTWORK BY PUBLIC GALLERIES

- 13.1 Where the primary mandate of a public gallery is the exhibition and collection of artists' work, the gallery should not collect a commission on sales of artwork in temporary exhibitions.
- 13.2 Where a public gallery operates a retail sales outlet in addition to its exhibition and collecting functions, see *Industry Standards/ Best Practices for Saskatchewan Commercial Galleries and Artists*.

- 13.3 Any existing relationship between the artist and a commercial gallery should be respected by both the artist and the public gallery.

14 DISPUTE

- 14.1 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).