

THE ARTIST'S RESERVED RIGHTS TRANSFER AND SALE AGREEMENT

SECOND EDITION

The accompanying form is the second edition of the contract conceived by Seth Siegel and drafted by Robert Projansky, a New York attorney, in 1971. It has been revised by Mr. Projansky. The original contract was well-received by artists, but distribution was limited and its legal language was rather forbidding. The version published on this poster is much shorter, easier to read and easier to use.

WHAT THE CONTRACT DOES

The contract is designed to give the artist:

- 15% of any increase in the value of each work each time it is transferred;
- a record of who owns each work at any given time;
- the right to have the work remain unaltered by the owner;
- the right to be notified if the work is to be exhibited;
- the right to show the work for 2 months every five years (at no cost to the owner);
- the right to be consulted if restoration becomes necessary;
- half of any rental income paid for the work, if there ever is any;
- all reproduction rights.

The economic benefits would last for the artist's lifetime, plus the life of a surviving spouse, plus 21 years, so as to benefit the artist's children while they are growing up. The aesthetic controls would last for the artist's lifetime.

WHEN TO USE THE CONTRACT

The contract form is to be used when the artist parts with each work FOR KEEPS:

Whether by sale, gift, or trade for things or services;
Whether it's a painting, a sculpture, a drawing, a non-object piece or any other fine art;

In short, this contract will help you discover who your friends are. If a buyer wants to buy but doesn't want to sign, tell him that all your work is sold under the contract, that it's standard for your work.

You can point out to the reluctant buyer:

The contract doesn't cost anything unless your work appreciates in value; most art doesn't;

If he makes a profit on your work you get only a small percentage of it—about the equivalent of a waitress's tip;

If you like you can offer to take your prospective 15% payment in something other than money, or to give him a partial credit against a new work;

Or you can offer to put in an original value that's more than what he's paying, giving him a free ride on part of any prospective profit.

Of course, if a collector buys a work refusing to sign the contract he will have to rely on good will when he wants you or your dealer to appraise, restore or authenticate it. Why he should expect to find good will there is anybody's guess.

Is the buyer really going to pass up your work because you ask him to sign this contract? Work that he likes and thinks is worth having? If the answer is 'yes', given the fact that it doesn't cost him a thing to give you, the artist, the respect that you as the creator of the work deserve—if that will keep him from buying, he is too stubborn and foolish for anyone to tell you how to illuminate him. Non-use of this contract is a dumb criterion for selecting art.

ENFORCEMENT

First, let's put this in perspective: most people will honor the contract because most people honor contracts. Those who are likely to cheat you are likely to be the same ones who gave you a hard time about signing the contract in the first place. Later owners will be more likely to cheat you than the first owner, but there are strong reasons why both first and future owners of your work should fulfill the contract's terms.

What happens if owner #1 sells your work to owner #2 and doesn't send you the transfer form? (He's not sending your money, either.)

Nothing happens. (You don't know about it yet.)

Sooner or later you do find out about it because the grapevine will get the news to you (or your dealer) anyway. Then, if owner #1 doesn't come across you can sue him. He will be stuck for 15% of the profit he made OR 15% of the increase in value to the time you heard about it, which may be much more. Also, note that if you have to sue to enforce any right under the contract, Paragraph 14 gives you the right to recover reasonable attorney's fees in addition to any other remedy to which you may be entitled. Clearly, owner #1 would be foolish to take the chance.

As to falsifying values, there will be as much pressure from new owners to put in high values as there is from old owners to put in low values. In 95% of the cases the amount of money to be paid the artist won't be enough to make them lie to you (in unison).

SUMMARY

We realize this contract, like its predecessor, will disturb some dealers, museums and high-powered collectors, but the ills it remedies are universally acknowledged to exist and no other practical way has ever been devised to cure them.

Its purpose is to put you—the artist—in the same position as the man behind the rent-a-car counter. He didn't write his contract, either, but he says: if you want it, sign here. You do the same.

Using this contract doesn't mean all your art world relationships will be strictly business hereafter or that you have to enforce every right down to the last penny. Friends will still be friends and if you want to waive your rights you can, but they will be YOUR rights and the choice will be YOURS.

The contract in its prior form has been used by many artists—known, well-known and unknown. Use it. It's enforceable. The more artists and dealers who use it, the better and easier it will be for everybody to use it. It requires no organization, dues, meetings, registration or government agency—just your desire to protect the integrity of your art.

What it gives you, the artist, is a legal tool you can use to establish continuing rights in your work at the time you transfer it but whether or not you use the contract is up to you. Consider the contract as a substitute for what is available otherwise: nothing.

This has been created for no recompense to the author for just the pleasure of attacking a challenging problem, and it is based on the feeling that should there ever be a question about artists' rights in reference to their art, the artist is more right than anyone else.

Please POST, REPRODUCE and USE this poster freely. The poster is not to be sold. The cost of the production, printing, and distribution of this document has been underwritten by Associated Councils of the Arts, 1564 Broadway, NY, NY 10036. If you use this contract please let us know. Address all substantive queries to Artists' Rights Association, 27 West 15th St., NY, NY 10011.

AGREEMENT OF ORIGINAL TRANSFER OF WORK OF ART

fill in names, addresses of parties

Artist: _____ address: _____

Purchaser: _____ address: _____

WHEREAS Artist has created that certain Work of Art ("the Work"):

fill in data identifying the Work

Title: _____ dimensions: _____

media: _____ year: _____ and _____

WHEREAS the parties want the Artist to have certain rights in the future economics and integrity of the Work, The parties mutually agree as follows:

fill in agreed value

1. SALE: Artist hereby sells the Work to Purchaser at the agreed value of \$ _____

2. RETRANSFER: If Purchaser in any way whatsoever sells, gives or trades the Work, or if it is inherited from Purchaser, or if a third party pays compensation for its destruction, Purchaser (or the representative of his estate) must within 30 days

(a) Pay Artist 15% of the "gross art profit", if any, on the transfer; and
(b) Put the new owner to work with this contract by signing a properly filled-out "Transfer Agreement and Record"

- the right to be consulted if restoration becomes necessary;
- half of any rental income paid for the work, if there ever is any;
- all reproduction rights.

The economic benefits would last for the artist's lifetime, plus the life of a surviving spouse, plus 21 years, so as to benefit the artist's children while they are growing up. The aesthetic controls would last for the artist's lifetime.

WHEN TO USE THE CONTRACT

The contract form is to be used when the artist parts with each work FOR KEEPS:

- Whether by sale, gift, or trade for things or services;
- Whether it's a painting, a sculpture, a drawing, a non-object piece or any other fine art;
- Whether to a friend, a collector, another artist, a museum, a corporation, a dentist, a lawyer—anyone.

It's NOT for use when you *lend* your work or *consign* it to your dealer for sale; it IS for use when your dealer sells your work (or if he buys it himself).

HOW TO USE THE CONTRACT

1. Photocopy the contract form. You'll need 2 copies for each transfer. Save this original to make future copies and for reference.
2. Fill out both copies, using the checklist instructions in the margin.

You may want to enter "Artist's address" as c/o your dealer.

Note that the contract speaks in terms of a "sale"; the word "sell" is used for the sake of simplicity (likewise we use the word "purchaser" because it's the most all-inclusive word for this purpose). In a sense, even if you are giving or trading your work you are "selling" it for the promises in the contract plus anything else you get.

In paragraph 1 enter the price OR the value of the work. You can enter any value that you and the new owner agree upon. If he sells it later for more he will have to pay you 15% of the increase, so the higher the number you put in originally the better break the purchaser is getting. If you are giving a friend a work or exchanging with another artist (be sure to use two separate contracts for the latter situation) you might want to enter a very low value so you would get some money even if he/she resells it at a bargain price.

If there are things you wish to delete or modify, cross out what you don't want and make any small changes directly on the form, *making sure that both parties initial all such strikeouts and changes*. If you don't have room on the form for the changes you want, add them on separate sheets entitled "Rider to Contract" and *be sure both are signed by parties and dated*. You should consult an attorney for extensive changes.

3. You and the purchaser sign both copies so each will have a legal original.
4. Before the work is delivered be sure to cut out the NOTICE from the lower right corner of one copy and affix it to the work. Put it on a stretcher bar or under a sculpture base or wherever it will be aesthetically invisible yet findable. Protect it with a coat of clear polyurethane or the like.

If your work simply has no place on it for the NOTICE or your signature—in which case you should always use an ancillary document which describes the work, which bears your signature and which is transferred as a (legal) part of the work—glue or copy the NOTICE on that document.

RESALE PROCEDURE

When a work is resold the seller makes three copies of the TRANSFER AGREEMENT AND RECORD ("TAR") from the original contract, fills them out entering the value that he and the next owner have agreed on, and both of them sign all three copies. The seller keeps one, sends one to the artist with the 15% payment (if required) and gives one to the new owner along with a copy of the original agreement, so he will know his responsibilities to the artist and have the TAR form if the work is resold again.

THE DEALER

If you have a dealer he will be very important in developing your use of the contract. He should make use of the contract a policy of the gallery, thereby giving the artists in the gallery collective strength against those collectors and institutions who don't really have the artist's interests at heart.

Remember, your dealer knows all the ins and outs of the art world; he knows the ways to get the few reluctant buyers to sign the contract—the better the dealer the more ways he knows. He can do what he does now when he wants something for one of his artists—give the collector favors, exchange privileges, discounts, hot tips, advice, time and all the other things buyers expect and appreciate. It even gives him an opportunity to raise the subject of prospective increase in the value of your work without seeming crass.

The contract helps dealers do what they try to do now anyway. Dealers try to keep track of the work they have sold, but now they can only rely on hit-or-miss intelligence and publicity. The contract creates a simple record system which will automatically maintain a biography of each work and a chronological record of ownership. It makes giving a *provenance* no trouble at all. And it's almost costless to administer, only another few minutes of typing for each sale.

Using the contract is mostly a state of mind. If your dealer doesn't think the benefits of the contract are important he will have dozens of reasons why he can't get the buyers to sign it; if he cares and wants those benefits for you he'll use it every time and he won't lose a sale.

THE FACTS OF LIFE: YOU, THE ART WORLD AND THE CONTRACT

The vast majority of people in the art world feel that this idea is fair, reasonable and practical. Reservations about using the contract can be summed up in two basic statements:

- "... the economics of buying and selling art is so fragile that if you place one more burden on the collectors of art, they will simply stop buying art..." and
- "... I will certainly use the agreement, but only if everyone else uses it..."

The first statement is nonsense. Clearly the *art* will be just as desirable with as without the contract, and there's no reason why the value of any work should be affected, especially if this contract is standard for the sale of art, which brings us to the second statement. If there's a problem here, it's the concern of artists or dealers that the insistence on use of this contract will jeopardize their sales in a competitive market. Under careful scrutiny this proves to be mostly illusory.

All artists sell, trade and give their work to only two kinds of people:

- those who are their friends;
- those who are not their friends.

Obviously, your friends won't give you a hard time. The only trouble will come with someone who isn't your friend. Since surely 75% of all serious art that's sold is bought by people who are friends of the artist or dealer—friends who drink together, weekend together, etc.—resistance will come only in some of those 25% of your sales to strangers. Of those people, most will wish to be friendly with you and won't hesitate to sign the contract to show their respect for your ongoing relationship with your work. This leaves perhaps 5% of your sales which encounter serious resistance over the contract, and even this should decrease toward zero as the contract comes into widespread use.

addresses of parties

fill in data identifying the Work

fill in agreed value

fill in date both sign

fill in data identifying the Work

fill in date

fill in names, addresses of parties

do not FILL in anything between these lines

fill in date fill in names of parties and Artist's address on both Notices

Purchaser: _____ address: _____

WHEREAS Artist has created that certain Work of Art ("the Work"):

Title: _____ dimensions: _____

media: _____ year: _____ and

WHEREAS the parties want the Artist to have certain rights in the future economics and integrity of the Work, The parties mutually agree as follows:

1. **SALE:** Artist hereby sells the Work to Purchaser at the agreed value of \$ _____
2. **RETRANSFER:** If Purchaser in any way whatsoever sells, gives or trades the Work, or if it is inherited from Purchaser, or if a third party pays compensation for its destruction, Purchaser (or the representative of his estate) must within 30 days
 - (a) Pay Artist 15% of the "gross art profit", if any, on the transfer; and
 - (b) Get the new owner to ratify this contract by signing a properly filled-out "Transfer Agreement and Record" (TAR); and
 - (c) Deliver the signed TAR to the Artist.
 - (d) "Gross art profit" for this contract means only: "Agreed value" on a TAR less the "agreed value" on the last prior TAR, or (if there hasn't been a prior resale) less the agreed value in Paragraph 1 of this contract.
 - (e) "Agreed value" to be filled in on each TAR shall be the actual sale price if the Work is sold for money or the fair market value at the time if transferred any other way.
3. **NON-DELIVERY:** If the TAR isn't delivered in 30 days, Artist may compute "gross art profit" and Artist's 15% as if it had, using the fair market value at the time of the transfer or at the time Artist discovers the transfer.
4. **NOTICE OF EXHIBITION:** Before committing the Work to a show, Purchaser must give Artist notice of intent to do so, telling Artist all the details of the show that Purchaser then knows.
5. **PROVENANCE:** Upon request Artist will furnish Purchaser and his successors a written history and provenance of the Work, based on TAR's and Artist's best information as to shows.
6. **ARTISTS EXHIBITION:** Artist may show the Work for up to 60 days once every 5 years at a non-profit institution at no expense to Purchaser, upon written notice no later than 120 days before opening and upon satisfactory proof of insurance and prepaid transportation.
7. **NON-DESTRUCTION:** Purchaser will not permit any intentional destruction, damage or modification of the Work.
8. **RESTORATION:** If the Work is damaged, Purchaser will consult Artist before any restoration and must give Artist first opportunity to restore it, if practicable.
9. **RENTS:** If the Work is rented, Purchaser must pay Artist 50% of the rents within 30 days of receipt.
10. **REPRODUCTION:** Artist reserves all rights to reproduce the Work.
11. **NOTICE:** A Notice, in the form below, must be permanently affixed to the Work, warning that ownership, etc., are subject to this contract. If, however, a document represents the Work or is part of the Work, the Notice must instead be a permanent part of that document.
12. **TRANSFEREES BOUND:** If anyone becomes the owner of the Work with notice of this contract, that person shall be bound to all its terms as if he had signed a TAR when he acquired the Work.
13. **EXPIRATION:** This contract binds the parties, their heirs and all their successors in interest, and all Purchaser's obligations are attached to the Work and go with ownership of the Work, all for the life of the Artist and Artist's surviving spouse plus 21 years, except the obligations of Paragraphs 4, 6 and 8 shall last only for Artist's lifetime.
14. **ATTORNEYS' FEES:** In any proceeding to enforce any part of this contract, the aggrieved party shall be entitled to reasonable attorneys' fees in addition to any available remedy.

Date: _____

Artist

Purchaser

TRANSFER AGREEMENT AND RECORD

Title: _____ dimensions: _____

media: _____ year: _____

Ownership of the above Work of Art has been transferred between the undersigned persons, and the new owner hereby expressly ratifies, assumes and agrees to be bound by the terms of the Contract dated _____ between:

Artist: _____ address: _____ and

Purchaser: _____ address: _____

Agreed value (as defined in said contract) at the time of this transfer: \$ _____

Old owner: _____ address: _____

New owner: _____ address: _____

Date of this transfer: _____

SPECIMEN NOTICE

Ownership, transfer, exhibition and reproduction of this Work of Art are subject to a certain Contract dated _____ between:

Artist: _____

Address: _____ and

Purchaser: _____

Artist has a copy.

cut out, affix to Work

NOTICE

Ownership, transfer, exhibition and reproduction of this Work of Art are subject to a certain Contract dated _____ between:

Artist: _____

Address: _____ and

Purchaser: _____

Artist has a copy.