

Chapter ATCP 117

ART PRINTS AND MULTIPLE ART; SALES PRACTICES

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Note: Chapter Ag 135 was renumbered chapter ATCP 117 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

Note: This chapter is adopted under authority of s. 100.20 (2), Stats., and is administered by the Wisconsin department of agriculture, trade and consumer protection. Violations of this chapter may be prosecuted under s. 100.20 (6), 100.26 (3) or (6), Stats. A person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under s. 100.20 (5), Stats., and may recover twice the amount of the loss, together with costs and reasonable attorneys' fees.

ATCP 117.01 Application. This chapter applies to all sales of and offers to sell works of multiple art between an art supplier and an art dealer or between an art dealer and a buyer, if any portion of the transaction occurs in Wisconsin, including deliveries into or from Wisconsin and solicitations by mail or telephone where the solicitor or buyer is in Wisconsin.

Note: Sale solicitations by mail or telephone may also be subject to regulation under ch. ATCP 127 and under ch. 423, Stats.

History: Cr. Register, August, 1990, No. 416, eff. 9-1-90.

ATCP 117.05 Definitions. In this chapter:

(1) "Art dealer" means either of the following:

(a) A person who is in the business or represents himself or herself as being in the business of dealing, exclusively or non-exclusively, in the sale of multiple art.

(b) An agent, officer, director, employee or other representative of a person listed in par. (a).

(2) "Buyer" means any person, other than an art dealer, who buys multiple art from an art dealer.

(3) "Department" means the department of agriculture, trade and consumer protection.

(4) "Investment art" means a work of multiple art whose price exceeds \$800.

(5) "Limited edition" means the total number that will be designated as part of any "limited edition" of a work of multiple art has been established, in a manner that binds all further production, by a person who can control production of the limited edition. The total number designated as being within the "limited edition" shall consist of every original and copy of the work which is identified or will be identified as being part of a "limited edition", including any original or copy:

(a) Produced on paper of a type different from the work.

(b) Exhibiting minor variations in size, color or image.

(c) Designated as a proof, artist's copy, sample or part of a numbered or unnumbered series.

(d) Containing the image of the work.

(e) Consisting of a portion of the image represented by the work.

(6) "Mail" includes public or private mail or parcel service.

(7) "Market value" means the price at which a work of multiple art could be sold in a bona fide transaction for investment or asset preservation purposes to an expert utilizing generally accepted appraisal criteria and acting on behalf of a retail buyer. "Market value" excludes the bona fide retail value of framing and mounting.

(8) "Master" means the plate, stone, block, screen, mold, photographic negative or similar matrix containing the image used to produce a work of multiple art.

(9) "Multiple art" means a print, sculpture, bas relief, etching or other work of visual art, excluding motion pictures or video, produced from a master in quantities of 2 or more.

(10) "Original" means a work of multiple art meeting each of the following conditions:

(a) The work's master was either created by the artist alone or by the artist and by others acting under the artist's supervision and direction.

(b) The work's master was created for the purpose of producing the work of multiple art.

(c) The work was produced by or under the supervision and direction of the artist.

(d) The work was approved by the artist after its completion.

(11) "Photomechanical reproduction" means a work of multiple art whose production involved, at any stage, the use of photographic or electronic procedures.

(12) (a) "Price" means the greater of:

1. The amount charged by an art dealer for a single work of multiple art or for a series of related works of multiple art sold at the same time.

2. The amount at which an art dealer represents that he or she will sell a single work of multiple art or a series of related works of multiple art. A representation of price includes any advertisement, posted price or oral statement made to a prospective buyer.

(b) "Price" does not include the bona fide retail value of framing and mounting.

(13) "Sell" includes the consignment or exchange of a work of multiple art.

(14) "Signed" means the actual hand signature of the artist, affixed to a work of multiple art. "Signed" does not include any reproduction of the artist's signature or a signature made by any person other than the artist, whether authorized or not.

(15) "Supplier" means a person who sells a work of multiple art to an art dealer.

(16) "Telephone" includes any electronic transfer of data, including telex, cellular, facsimile and modem transmissions.

History: Cr. Register, August, 1990, No. 416, eff. 9-1-90.

ATCP 117.10 Prohibited acts. (1) MISREPRESENTATION ABOUT MULTIPLE ART. No art dealer may misrepresent any element of a work of multiple art. Unless otherwise proven, any representation not consistent with generally accepted trade literature or the general consensus of expert members of the art trade is a misrepresentation under this subsection. The art dealer has the burden of proving, by a preponderance of the evidence, the truth of any representation not based on these sources. Misrepresentations prohibited under this subsection include:

(a) Misrepresenting a non-original work of multiple art as an original.

(b) Failing to disclose as part of any representations concerning a photomechanical reproduction that photographic or electronic procedures were used in the work's production, if:

1. The work's price exceeds \$800.

2. Any representation of the photomechanical reproduction includes a term such as "lithography", "etching", "silkscreen-

ing", "serigraphy", "woodcutting" or "engraving", which is used in a manner implying the work was created by a classical means of production.

(c) Selling or offering to sell a work of multiple art that appears to be signed by the artist, but is not.

Note: This paragraph does not prohibit the sale of works where the artist's signature was affixed to the master and is printed in the work. See s. ATCP 117.05 (14) for the definition of a "signed" work.

(d) Selling or offering to sell a work of multiple art exhibiting a numerical or other code that states or implies the work is part of any limited edition, such as 23/200, A.P., E.A. or H.C., if the work is not part of a limited edition.

Note: "A.P." is used to designate "artist's proofs", "E.A.", or "edition artiste", has the same meaning, while "H.C." means "hors de commerce", which was generally used to denote prints the artist retained or the artist's agent carried as representative samples.

(e) 1. Any misrepresentation regarding an element of a work of multiple art, including:

- a. The artist's identity.
- b. The authenticity of the artist's signature.
- c. The master from which the work was created and whether the master has been effaced or destroyed.
- d. The medium in which originals of the work were created.
- e. The means, date, manner and circumstances of the work's or the master's production, including the involvement of the artist and the artist's estate, pupils or representatives.
- f. The work's image dimensions.
- g. The type of paper used, if the work is a print.
- h. The involvement of photomechanical procedures in producing the work.
- i. The itemization and identification of all editions of the work.
- j. The work's prior sales or ownership history.
- k. The number of works produced or to be produced in a limited edition.

2. Any misrepresentation regarding the availability of information about a work of multiple art from normal trade sources.

3. This paragraph applies to the supplier's declaration, the disclosure and warranty statement and any other representation regarding a work of multiple art.

(f) Any inaccuracy in a disclosure and warranty statement made under s. ATCP 117.15 or a supplier's declaration under s. ATCP 117.20 and any representation inconsistent with those made in the statement or declaration. An art dealer who states on a disclosure and warranty statement that an item of information is "unknown", when the art dealer actually knows the information or when the item could be determined either from generally accepted trade literature or from the general consensus of expert members of the art trade, has made a misrepresentation prohibited under this paragraph.

(2) MISREPRESENTATIONS ABOUT THE MARKET VALUE OF A WORK OF MULTIPLE ART. No art dealer may misrepresent the market value of a work of multiple art. If a work's represented market value exceeds its actual market value by 30% or more, calculated as of the date the representation is made, the work shall conclusively be found to have been misrepresented under this subsection. The art dealer's price of a work of multiple art is a representation of market value if, in conjunction with an offer to sell or sale of the work to a buyer, the dealer also makes:

(a) Representations that state or imply the work's market, appraisal, replacement, resale, insurance, charitable donation or other monetary value equals or exceeds its price.

(b) Representations about another work's market value or price in a context that states or implies the work being sold has a market value equal to or exceeding its price or has investment or asset preservation potential.

(c) Representations concerning the existing or potential public prominence of the work or the artist in a context that states or implies the work has investment or asset preservation potential.

(d) Other references to the work or the artist in a context that states or implies the work has investment or asset preservation potential.

(3) MISREPRESENTATIONS ABOUT DISCLOSURE AND WARRANTY STATEMENTS AND SUPPLIER'S DECLARATIONS. No art dealer may misrepresent to a prospective buyer or buyer the purpose of a disclosure and warranty statement required under s. ATCP 117.15 or a supplier's declaration under s. ATCP 117.20.

(4) RECORDS. No art dealer or supplier may falsify any record required to be retained under this rule or misrepresent its status or existence. No art dealer or supplier may refuse the department access to inspect and copy any record required under this rule.

History: Cr. Register, August, 1990, No. 416, eff. 9-1-90.

ATCP 117.15 Required disclosure and warranty statements.

(1) ART DEALER'S RESPONSIBILITY. (a) Before receiving any payment for the sale of a work of investment art, an art dealer shall provide the prospective buyer with a completed disclosure and warranty statement specified in sub. (2) and obtain the buyer's signature on the statement. If the art dealer sells a work of investment art by telephone or mail, a completed copy of the disclosure and warranty statement shall be in the prospective buyer's possession before the art dealer requests payment.

(b) Each disclosure and warranty statement required under this section shall be completely and accurately filled out, unless the art dealer affirms in writing on the statement that a particular item of information is unknown to the dealer and cannot be determined from generally accepted trade literature or the general consensus of expert members of the art trade.

(c) Each disclosure and warranty statement shall be printed in no less than 10-point type.

(2) DISCLOSURE AND WARRANTY FORMS. Each art dealer selling investment art shall use the following disclosure and warranty form:

"INVESTMENT ART DISCLOSURE AND WARRANTY STATEMENT FULL WARRANTY"

The state of Wisconsin requires this form for the sale of all works of multiple art priced over \$800 (not including the bona fide retail value of framing and mounting). These sales are regulated by the Department of Agriculture, Trade and Consumer Protection, P.O. Box 8911, Madison, Wisconsin 53708. Chapter ATCP 117, Wis. Adm. Code, creates certain rights in the buyer if an art dealer misrepresents such a work or fails properly to complete and provide you with this form. Section 100.20, Wis. Stats., lists specific penalties and remedies for noncompliance.

This warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

YOU OR YOUR REPRESENTATIVE ARE ENTITLED TO INSPECT THIS WORK OF ART WITHOUT ITS FRAME OR OTHER PROTECTIVE COVERING, PRIOR TO ANY PAYMENT, FOR A FEE NOT TO EXCEED \$25. IF THIS RIGHT IS NOT OFFERED TO YOU PRIOR TO PAYMENT OF THE PURCHASE PRICE, YOU MAY CANCEL THIS TRANSACTION WITHIN 15 DAYS OF THE TIME YOU RECEIVE THE WORK OF ART.

All information on this form must be accurate. The art dealer may indicate on the form that a particular item is unknown, but only if it cannot be determined from generally accepted trade literature or from the general consensus of expert members of the art trade and is unknown to the dealer.

_____(Art Dealer) warrants the accuracy of the following information about the work of art named below. As long as buyer owns this work of art, if any statement on this form

is incorrect the art dealer agrees to return to buyer the full purchase price within 15 days of notification and to bear the cost of exchange and other costs buyer incurred to determine the incorrectness of the statement. Other legal remedies may also be available under Wisconsin law.

1. Name, title or description of work of art: _____

2. Artist _____

3. This work displays the artist's original hand signature:
Yes _____ No _____

4. This is an original work of multiple art. The work's master was either created by the artist alone or by the artist and by others acting under the artist's supervision and direction, the work's master was created for the purpose of producing this work, the work was produced by or under the supervision and direction of the artist, and the work was approved by the artist after its completion. Yes _____ No _____ (If yes check one of the following:) The work's master was created:

(a) By the artist alone. _____

(b) By the artist and others, acting under the artist's supervision and direction. _____

5. Photomechanical reproduction was used to produce part or all of this work. Yes _____ No _____ (If yes, complete the following:) That part of the work which was reproduced photomechanically was first created in the medium of _____.

6. (a) This work was produced in _____ (year) at _____ (location). It was published and produced by _____. It has the following image dimensions: _____ and the following markings: _____ (edition number or other identifier).

(b) (If a print, complete the following:) The work was printed on _____ (manufacturer) paper using the process known as _____ (specify process, such as "lithography", "serigraphy", "etching", "photomechanical reproduction", etc.).

(c) (If a sculpture, complete the following:) The work is made of: _____.

7. The prior owners or custodians of this work were: _____

8. This work is part of a limited edition. The total number of originals or copies that will be designated as part of any limited edition of this work has been established, in a manner that binds all further production, by a person who can control production of the limited edition. Yes _____ No _____ (If yes, complete the following:)

(a) The total number of works within this limited edition is _____. This edition consists of every original and copy of this work identified as being part of any limited edition, including any original or copy:

- i. Produced on paper of a type different from the work.
- ii. Exhibiting minor variations in size, color or image.
- iii. Designated as a proof, artist's copy, sample or part of a numbered or unnumbered series.
- iv. Containing the image of the work.
- v. Consisting of a portion of the image represented by the work.

(b) The following is a complete itemization of all works contained in this limited edition:

(c) The master that produced this work was effaced or destroyed. Yes _____ No _____

Name of art dealer: _____

Address: _____

Signed: _____
(Art dealer's authorized representative)

Date: _____

Signed: _____
(Buyer)

Date: _____

Disclaimers:

(a) Buyer understands that he or she is entitled to inspect this work of art, but chooses to waive this right. This is a disclaimer—buyer is not required to sign here.

Signed: _____
(Buyer)

Date: _____

(b) Buyer understands he or she is entitled to the disclosures in this statement, but chooses to waive this right and buy this work on an "as is" basis. This is a disclaimer—buyer is not required to sign here.

Signed: _____
(Buyer)

Date: _____

(3) **BUYER'S RIGHT TO INSPECT.** Any person interested in buying a work of investment art may inspect the work, without framing or other protective covering, before buying. If the art dealer does not permit such an inspection, the buyer may cancel the purchase up to 15 days after receiving the work. If a potential buyer requests to inspect a work of investment art being sold by mail or telephone, the art dealer may deliver the work to within 60 miles of the potential buyer's residence. The art dealer may charge up to \$25 for preparing and delivering a work for inspection.

(4) **DISCLAIMERS.** (a) A buyer may waive the right to inspect under sub. (3) by signing a disclaimer on the disclosure and warranty statement.

(b) An art dealer is not required to complete the disclosure and warranty statement fully if all the following occur:

1. The buyer signs the disclosure and warranty statement's disclaimer before the art dealer receives any purchase money.
2. The disclosure and warranty statement identifies the art dealer, the name of the artist, the work's identifying numbers or other markings, if any, and the work's title.
3. The disclosure and warranty statement is not replaced by any substitute warranty, certificate of authority or other representation concerning the authenticity or other attributes of the investment art.

(c) An art dealer is not required to include the disclaimers on disclosure and warranty statements.

History: Cr. Register, August, 1990, No. 416, eff. 9-1-90.

ATCP 117.20 Supplier's declaration. (1) **SUPPLIER'S AND ART DEALER'S RESPONSIBILITIES.** (a) Before selling or offering to sell a work of investment art an art dealer has purchased after September 1, 1990, the dealer shall have in his or her possession a completed supplier's declaration concerning the work, as specified in sub. (2). Each supplier's declaration required under this section shall be completely and accurately filled out. The supplier may, where indicated on the declaration, state that a particular item of information is not being certified by the supplier or is not applicable to the work of investment art. A "not certi-

fied" response indicates the supplier cannot or will not certify the accuracy of the item. The supplier shall base all declarations made about the particular work of investment art on generally accepted trade literature or on the general consensus of expert members of the art trade. The supplier has the burden of proving, by a preponderance of the evidence, any declaration not based on these sources, with the exception of "not certified" responses.

(b) Each supplier's declaration shall be printed in no less than 10-point type.

(2) **DECLARATION FORMS.** Suppliers of investment art shall use the following declaration form:

"INVESTMENT ART SUPPLIER'S DECLARATION"

The state of Wisconsin requires that an art dealer retain a completed copy of this form for the sale of all works of multiple art the dealer has purchased on or after September 1, 1990 and will price at retail over \$800 (not including the bona fide retail value of framing and mounting). These sales are regulated by ch. ATCP 117, Wis. Adm. Code, which is administered by the Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, Wisconsin 53708-8911. Section 100.20, Wis. Stats., lists specific penalties and remedies for non-compliance, including penalties for misrepresentation made in this declaration.

All spaces on this form must be accurately filled in, except that the supplier may respond, where indicated, that a particular item is not being certified by the supplier or is not applicable. A "not certified" response indicates that the supplier cannot or will not certify the accuracy of the item.

Declaration of: _____

(Art supplier's name and address)

1. Title of work of art: _____

2. Artist: _____

3. I have sold or consigned the above work of art to: _____

(Art dealer's name and address)

4. This is an original work of multiple art. The work's master was either created by the artist alone or by the artist and by others acting under the artist's supervision and direction, the work's master was created for the purpose of producing this work, the work was produced by or under the supervision and direction of the artist, and the work was approved by the artist after its completion. Yes _____ No _____ Not certified _____ (If yes, check one of the following:) The work's master was created:

(a) By the artist alone. _____

(b) By the artist and by others acting under the artist's supervision and direction. _____

5. This work is part of a limited edition. The total number of originals or copies that will be designated as part of any limited edition of this work has been established, in a manner that binds all further production, by a person who can control production of the limited edition. Yes _____ No _____ (If yes, complete the following:)

(a) The total number of works within this limited edition is _____. This edition consists of every original and copy of this work identified as being part of any limited edition, including any original or copy:

i. Produced on paper of a type different from the work.

ii. Exhibiting minor variations in size, color or image.

iii. Designated as a proof, artist's copy, sample or part of a numbered or unnumbered series.

iv. Containing the image of the work.

v. Consisting of a portion of the image represented by the work.

(b) The following is a complete itemization of all works contained in this limited edition:

(c) The master that produced this work was effaced or destroyed. Yes _____ No _____

6. Identifying numbers or markings: _____

7. I understand that this work of art will be offered for sale at a price in excess of \$800.

8. This work of art displays:

(a) The authentic signature of the artist.

Yes _____ No _____ Not certified _____

(b) Authentic identifying numbers or other markings.

Yes _____ No _____ Not certified _____

Signed: _____

(Supplier's authorized representative)

Date: _____

History: Cr. Register, August, 1990, No. 416, eff. 9-1-90; correction in (2) made under s. 13.93 (2m) (b) 6., Stats., Register, March, 1999, No. 519.

ATCP 117.25 Records. (1) GENERAL RECORD KEEPING.

(a) If an art dealer sells any work of multiple art for more than \$300, the dealer shall retain records identifying the work, the date of sale, the sale price and the buyer's name and address.

(b) If an art dealer sells any work of multiple art for more than \$300 and the dealer purchased the work on or after September 1, 1990, in addition to the records required under par. (a) the dealer shall retain records identifying:

1. The date of purchase from the supplier and the supplier's name and address.

2. The supplier's selling price or the terms of consignment or exchange.

(2) **RECORD KEEPING FOR INVESTMENT ART.** (a) If an art dealer sells any work of investment art, the dealer shall retain all of the following:

1. All the records required under sub. (1).

2. A copy of the disclosure and warranty statement.

3. All records, including invoices, that disclose the date of purchase from the supplier, the supplier's name and address and the supplier's selling price or the terms of consignment or exchange. If the art dealer purchased the work before September 1, 1990 and does not have the records required under this subdivision, the dealer shall retain a declaration setting forth the same information.

(b) If an art dealer sells any work of investment art and the dealer purchased the work on or after September 1, 1990, in addition to the records required under par. (a) the dealer shall retain a copy of the supplier's declaration.

(3) **RETENTION PERIODS.** (a) 1. Except as provided in subd. 2., art dealers shall retain records required under this section for 3 years following the date of sale to a buyer.

2. Art dealers shall retain copies of completed supplier's declarations and disclosure and warranty statements, including statements related to canceled transactions, for 5 years following the date of sale to a buyer.

(b) Suppliers shall retain copies of completed supplier's declarations for 5 years following the date of sale to an art dealer.

History: Cr. Register, August, 1990, No. 416, eff. 9-1-90.