

1979 Assembly Bill 158

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CHAPTER 61, Laws of 1979

AN ACT to create chapter 129 of the statutes, relating to consignment of works of fine art, rights of creditors of art dealers and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Chapter 129 of the statutes is created to read:

CHAPTER 129

CONSIGNMENTS OF WORKS OF FINE ART

129.01 Definitions. In this chapter:

- (1) "Art dealer" means a person engaged in the business of selling works of fine art, other than a person exclusively engaged in the business of selling goods at public auction.
- (2) "Artist" means the creator of a work of fine art.
- (3) "On consignment" means delivered to an art dealer for the purpose of sale or exhibition, or both, to the public by the art dealer other than at a public auction.

(4) "Work of fine art" means an original art work which is:

(a) A visual rendition including, but not limited to, a painting, drawing, sculpture, mosaic or photograph.

(b) A work of calligraphy.

(c) A work of graphic art, including, but not limited to, an etching, lithograph, offset print or silk screen.

(d) A craft work in materials, including but not limited to clay, textile, fiber, wood, metal, plastic or glass.

(e) A work in mixed media, including, but not limited to, a collage or a work consisting of any combination of pars. (a) to (d).

129.02 Art dealer and artist; relationship. If an art dealer accepts a work of fine art, on a fee, commission or other compensation basis, on consignment from the artist who created the work of fine art:

(1) The art dealer is, with respect to that work of fine art, the agent of the artist.

(2) The work of fine art is trust property and the art dealer is trustee for the benefit of the artist until the work of fine art is sold to a bona fide 3rd party.

(3) The proceeds of the sale of the work of fine art are trust property and the art dealer is trustee for the benefit of the artist until the amount due the artist from the sale is paid.

(4) The art dealer is strictly liable for the loss of or damage to the work of fine art while it is in the art dealer's possession. The value of the work of fine art is, for the purpose of this subsection, the value established in a written agreement between the artist and art dealer prior to the loss or damage or, if no written agreement regarding the value of the work of fine art exists, the fair market value of the work of fine art.

129.03 Trust property. (1) If a work of fine art is trust property under s. 129.02 when initially received by the art dealer it remains trust property notwithstanding the subsequent purchase of the work of fine art by the art dealer directly or indirectly for the art dealer's own account until the purchase price is paid in full to the artist.

(2) If the art dealer resells a work of fine art to which sub. (1) applies to a bona fide 3rd party before the artist has been paid in full, the work of fine art ceases to be trust property and the proceeds of the resale are trust funds in the hands of the art dealer for the benefit of the artist to the extent necessary to pay any balance still due to the artist. The trusteeship of the proceeds continues until the fiduciary obligation of the art dealer with respect to the transaction is discharged in full.

129.04 Trust property, art dealer's creditors. No property which is trust property under s. 129.02 or 129.03 is subject to the claims, liens or security interests of the creditors of the art dealer, notwithstanding chs. 401 to 409.

129.05 Art dealer required to obtain written contract. (1) An art dealer may accept a work of fine art, on a fee, commission or other compensation basis, on consignment from the artist who created the work of fine art only if prior to or at the time of acceptance the art dealer enters into a written contract with the artist establishing:

(a) The value of the work of fine art;

(b) The time within which the proceeds of the sale are to be paid to the artist, if the work of fine art is sold; and

(c) The minimum price for the sale of the work of fine art.

(2) If an art dealer violates this section a court may, at the request of the artist, void the obligation of the artist to that art dealer or to a person to whom the obligation is transferred, other than a holder in due course.

129.06 Art dealer; duties. An art dealer who accepts a work of fine art, on a fee, commission or other compensation basis, on consignment from the artist who created the work of fine art may use or display the work of fine art or a photograph of the work of fine art or permit the use or display of the work of fine art or a photograph of the work of fine art only if:

(1) Notice is given to users or viewers that the work of fine art is the work of the artist; and

(2) The artist gives prior written consent to the particular use or display.

129.07 Waiver voided. Any portion of an agreement which waives any provision of this chapter is void.

129.08 Penalty. Any art dealer who violates s. 129.05 or 129.06, is liable to the artist in an amount equal to:

(1) \$50; and

(2) The actual damages, if any, including the incidental and consequential damages, sustained by the artist by reason of the violation and reasonable attorney fees.

SECTION 2. Applicability. (1) Chapter 129 of the statutes, as created by this act, applies to a work of fine art accepted on consignment on and after the effective date of this act, except as provided by sub. (2).

(2) If a work of art is accepted under a contract in existence prior to the effective date of this act, chapter 129 of the statutes is applicable to the work of fine art, proceeds of sale and art dealers only to the extent it does not conflict with the contract.
