



CANADIAN ARTISTS REPRESENTATION /
LE FRONT DES ARTISTES CANADIENS

ADVISORY NOTE

Art on the Menu

By CARFAC SASK © 1995-2005 REV 2005

Many visual artists are finding alternative ways to exhibit their work. It's no longer unusual to find pieces by local artists and craftspeople residing on the walls and window ledges of restaurants, cafes, shops, and other businesses. Such establishments are actively seeking commissions by visual artists and in many cases a percentage split on the sales is also part of the deal. Such arrangements are mutually satisfying: artists get to expose their work to viewers (and potential buyers); enterprises improve their profile by exhibiting original artwork.

Before entering into an arrangement with a place of business, artists are advised to protect themselves with a written agreement. Sales percentages, copyright and reproduction rights need to be established up front. Insurance, installation and shipping arrangements should be addressed. One danger is that if the business happens to go bankrupt, the artwork may be locked up inside or even considered collateral and seized. Artists must also be concerned about protecting their work from such factors as theft, damage, removal, and censorship.

The following **Loan Agreement for Purpose of Sale**, developed by CARFAC SASK, is an ideal contract for use when establishing exhibition arrangements at a place of business. Please note that it is a model agreement, which artists or the establishment owners may want to modify in certain areas to suit their specific requirements. Even if it is not wholeheartedly adopted, it can be utilized to lead artists through the areas which they should be concerned about in their negotiations. Once again, we stress that arrangements, preferably written, should always be made before any project is undertaken.



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An ideal way to protect property from an unauthorized sale or a seizure is to register the work in the Personal Property Registry (PPR) under the Personal Property Security Act of your province.

One of the dominant purposes of the PPR is to give buyers notice of other people's rights in property. For instance, a person can check the PPR to determine whether the used car they are buying has any loans outstanding on it or whether anyone has registered a lien against it. By registering works loaned out to businesses in the PPR, artists give buyers (and sheriffs in the case of seizure) notice that the works belong to them and not to the business. This warning in many cases will be enough to ensure that an artist's property will not be seized and sold without their permission.

If an artist loans out a number of works to a business or loans out works over a number of years, he/she only needs to register once in the PPR and describe his/her property as something like *"all artistic works (as defined in the Copyright Act) owned by the secured party and exhibited by or through the debtor"* or, in the case of a consignment *"all artistic works owned by the secured party and being sold on consignment by the debtor"*. This description should be sufficient to protect all of the artist's works the business.

It is important to remember that the PPR is a matter of provincial jurisdiction, and that registration in other provinces may be necessary, depending where the works are displayed.

To find out more information on registering in the PPR, please contact a lawyer or the personal property security branch of the appropriate provincial government.

In Ontario, the cost of registration is eight dollars per year; contact the Personal Property Security Registration office at 1-800-267-8847 or go to the Government of Ontario website at <http://www.cbs.gov.on.ca/mcbs/english/57PNPL.htm>

- 1. **Borrower** _____
Address _____ Telephone _____
- 2. **Artist (Lender)** _____
Address _____ Telephone _____
- 3. **Dates of Loan** From: _____ To: _____

4. **Description of Work Loaned:**

	Title	Medium	Size	Sale Price
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

*(The above works and any further works that may be described in schedule A hereto are collectively referred to herein as the "Works". All works are the property of the Artist.)

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements herein contained and the payment of Ten (\$10.00) Dollars by each party to the other, and other good and valuable consideration (the receipt and sufficiency which is hereby acknowledged by both parties), the parties agree hereto as follows:

5. **Display of Works**

The Borrower shall display the Works included for the term specified. The Works may not be removed from display without the permission of the Artist. The Artist may remove the Works from display with 48 hours notice to the Borrower.

6. **Sales**

The Borrower shall refer all inquiries regarding sales of the Works directly to the Artist. The Borrower shall clearly display information regarding the sale price, Artist's name and telephone number and/or address with each Work. The Borrower is not entitled to a commission on the sale of the Works, nor any fee for the display of the Works.

7. **Liability of Borrower**

The Borrower assumes all risks for loss of or damage to the Works, howsoever and by whomsoever caused, while the Works are in the possession or control of the Borrower or its employees and agents.

8. **Insurance**

The Borrower shall obtain all-risks insurance in respect of the Works covering all times when the Works are in the possession or control of the Borrower or the Borrower's employees or agents. The Works shall be insured for the Sale Price listed in Item 4. above. In the event of loss of or damage to the Works, the Borrower shall reimburse the Artist immediately for the costs of any insurance deductible paid by or charged against the Artist.

9. **Damage**

Repair of damage to the Works is the responsibility of the Borrower. The Borrower shall consult the Artist prior to carrying out any repairs to or restoration of a Work. All restoration and repairs must be consented to, in writing, by the Artist.

10. **Installation and Dismantling**

Subject to the supervision by the Artist, installation and dismantling of the Works are the responsibility of the Borrower.

11. **Transportation**

All transportation of the Works is the responsibility of the Borrower:

- a) Pick-up _____ Place: _____ Date: _____ Method: _____

b) Return Place: _____ Date: _____ Method: _____

c) Borrower's Agent: Telephone: _____

12. Copyright and Reproduction Rights

All copyright subsisting in the Works remains with the Artist at all times. The Borrower shall obtain the Artist's written permission prior to reproducing any of the Works.

13. Artist's Property

All Works remain the property of the Artist at all times, subject to sale to a purchaser thereof. If the Borrower commits or threatens to commit any act of bankruptcy, becomes insolvent, makes an assignment or proposal under the *Bankruptcy and Insolvency Act*, a general assignment in favour of its creditors, or a bulk sale of its assets, a bankruptcy petition is filed or presented against the Borrower, or a receiver, receiver and manager, or any person with like powers is appointed for all or any of the assets of the Borrower, then all of the Works shall be forthwith returned to the Artist together with any and all monies owing to the Artist in respect thereof, and, upon the Artist's receipt thereof, this agreement shall terminate.

14. Assignment

The Borrower shall not assign this agreement to any third party.

15. Further Restrictions on the Loan

Date _____

Borrower: x _____
(or Borrower's authorized agent)

Lender: x _____
(Artist or Artist's authorized agent)

Witness: x _____

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