



CANADIAN ARTISTS REPRESENTATION /
LE FRONT DES ARTISTES CANADIENS

ADVISORY NOTE

Artist/Public Gallery Exhibition Agreement

As arrived at by CARFAC Ontario © and
OAGG (Ontario Association of Art Galleries) © 1982

Comment

1. General Intent

- a) A solo exhibition means an exhibition by one artist. This clause states that the artist's work will not be interspaced with any other works of art -- in other words, the artist's work will have the exclusive occupancy of the space designated for it.

3. Fees

- a) An exact date when the artist is to be paid should be stated. Without a specified payment date, it would not be clear when a default occurs under Article 3b).
- b) It is not clear what the term "current interest indicators" refers to; if prime rate is meant, this could be stated.

4. Extended Duration

It may be more equitable for the artist to receive a prorated payment based on the length of the exhibition compared to the extension, rather than no further fee, until expiration of 25% of the duration of the agreement.

If the artist can't be reached in order to give consent it could be stipulated that the artist's agent may extend the exhibition. Alternatively, it could be stated that if the artist's consent can't be obtained, the show would not be extended.

5. Documentation

By listing the monetary "valuation for insurance purposes" of the work, this clause could be clarified.



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6. Insurance

Although most artists do not have insurance, for those who do, this clause may lead to double insurance coverage. There should be an option for the artist to use his or her own insurance coverage if the artist believes it would be preferable.

7. Transportation of Art Work

Rather than leaving it vague or stating that it is to be discussed, the method of shipment should be stated.

8. Publications

It is best to avoid using the term "and/or". It is ambiguous and can lead to disputes.

The artist should be entitled to 10 copies of each publication, not just the original publication.

Also, it is preferable to list the publications to be produced, rather than to refer to "handlist/catalogue information sheet", which is unclear.

The question of copyright could be resolved more clearly. It appears that the artist, as part of the consideration of this contract, licenses to the gallery the right to reproduce the artist's works on a first-time basis only, in a publication produced by the gallery to promote the exhibition. The gallery "holds" or owns the copyright to this publication and pays royalties on printings subsequent to the first printing. If the artist is the photographer of the photographs in the gallery's publication, this clause should stipulate that the copyright to these photographs and their negatives is retained by the artist.

9. Promotion

This is the vaguest and possibly the most contentious clause of this agreement. There is a great deal of discretion as to how the gallery will promote the exhibition. This clause states that the gallery will announce the exhibition "as it may consider appropriate". A more satisfactory approach is to enumerate the ways in which the gallery will announce the exhibition. This avoids the situation where the gallery deems it appropriate to not announce the show at all. It also avoids vagueness, which can lead to disputes.

12. Installation

This article doesn't state how many consultations are to take place or whether the gallery will implement any of the artist's suggestions. It appears the gallery has the ultimate discretion in installing the artist's work. The artist may wish to secure more input into the process of installation.

13. Copyright

The artist may wish the gallery to state how it will enforce this clause. In this regard, a notice posted by the artist's works, stating that it is an infringement of copyright to photograph the artist's work without the artist's permission, may have a deterrent effect.

16. Criminal Code

The exhibitor is liable for exhibiting an obscene work; however the intent of this clause is to protect both the artist and the gallery. If the gallery asks the artist to remove a work on the grounds of obscenity, the artist can either agree to edit the exhibition, or refuse and allow the exhibition to close.

Clearly, there is prejudice to the artist upon cancellation of the exhibition. If the police determine that a work is obscene, the work could be confiscated and the exhibition could be forced to close. The artist's reputation may suffer. There is ambiguity in this clause. It implies that the gallery has the right to determine what is scandalous, immoral or obscene, but the police may also do so. This should be clarified.

It is also not clear what "without prejudice or penalty" means. It would be clearer to say that the artist will still be paid the full exhibition fee even if the exhibition were cancelled. This is what appears to be intended.

17. Force Majeure

For an alternative to this standard clause, see the *Force Majeure* clause under "General Contractual Provisions" (page 5 of the book, *Model Agreements for Visual Artists: A Guide to Contracts in the Visual Arts* by Paul Sanderson, published by CARFAC Ontario, 1982, and available at CARFAC offices).

18. and 19. Breaches of Agreement

The confusing term "notwithstanding" can be omitted. "Liquidation damages" should probably read "liquidated damages". "No fine" should probably read "no damages".

A time duration for payment should be stated: for example, "Payment shall be within 30 days of either party's giving notice to the other."

20. Amendments

It would be preferable to state that all amendments shall be in writing, and by mutual consent of all parties to the agreement. As it now stands, the consent might be in writing without the amendment itself being in writing. Of course, it is preferable to have a written amending agreement.

Finally, a witness to the agreement is recommended. A witness is helpful should the agreement become the subject of litigation. Also, by way of general comment, this agreement may be reworded by substituting the word "shall" for the word "will", when stating a party's contractual obligation.

Artist/Public Gallery Exhibition Agreement

As arrived at by CARFAC Ontario and OAAG (Ontario Association of Art Galleries)

This agreement is made in duplicate on the _____ day of _____ 20____, between:

A _____ (hereinafter called "the Artist") and

B _____ (hereinafter called "the Gallery").

The parties hereto agree as follows:

I. General Intent

(a) The Gallery will present a solo exhibition in that part of the Gallery space commonly referred to as _____, of works by the Artist as per the attached list, in addition to _____ works yet to be completed and agreed to by both parties. The exhibition will take place from _____ 20____ to _____ 20____. These works will not be interspaced with any other displays of works of art.

Or

(b) The Gallery will present a solo exhibition in that part of the Gallery space commonly referred to as _____, of works by the Artist as per the attached list, in addition to _____ works yet to be completed and agreed to by both parties. The exhibition will take place from _____ 20____ to _____ 20____.

2. Presentation

The responsibility for framing will be

_____.

3. Fees

(a) The Gallery will pay the following fees to the Artist:

i) Exhibiting fee \$_____. OAGG has accepted in principle the *CARFAC Recommended Minimum Fee Schedule* as a guideline in the payment of artists' exhibition fees.

ii) \$_____.

iii) \$_____.

iv) \$_____.

Total \$_____.

The exhibiting fee is to include the use of photographs of works of art for publicity purposes connected with the exhibition only.

(b) Payments in default shall bear an interest rate of _____% (current interest indicators) per month.

4. Extended Duration

The Gallery may, with the consent of the Artist, extend the duration of the exhibition to _____ 20____ (not to exceed 25% of the original agreed-upon time) without payment of a further fee. Any extension beyond this date requested by the Gallery shall be at a further fee to be negotiated.

5. Documentation

The artist will provide biographical information and a list of works with titles, medium, support size, and valuation for insurance purposes to the Gallery on or before _____ 20_____.

6. Insurance

The Gallery or its agent will be responsible for the insurance of the full value of the works of art, including the deductible amount, during the transit to the Gallery, while on exhibition and in the Gallery or its agent's keeping and while in transit for return to the Artist after the closing of the exhibition.

7. Transportation of Art Work

The cost of shipment of the works of art to the Gallery will be the responsibility of the Gallery. The cost of shipment of the works of art being returned to the Artist will be the responsibility of the Gallery. The Gallery will return to the Artist all works (excepting any purchased by the Gallery) within 15 days of the termination of the exhibition. The method of shipment of works of art is a matter for individual discussion and agreement between the Artist and Gallery.

8. Publications

The Gallery will prepare and have printed at its expense a handlist/catalogue/ information sheet to accompany the exhibition, listing the works exhibited and illustrating some, as discussed with the Artist. The publication will be available to the public free of charge and/or at a price to be determined by the Gallery.

The Gallery will hold the copyright of such publication in its first printing. Subsequent printings for sale, which contain reproductions of the Artist's work, or any re-use of plates contained in the original catalogue, shall be by written consent of the Artist and with copyright royalties to the Artist, the amounts to be agreed upon by the two parties.

The Gallery will provide the Artist with _____ (minimum of 10) copies of the handlist/catalogue/information sheet for the Artist's personal use.

9. Promotion

The Gallery will arrange, at its expense, announcements of the exhibition as it may consider appropriate.

10. Promotion by Gallery

The Gallery will sponsor an event (an opening or closing) during the exhibition, as agreed with the Artist, and will send notices to a list of persons provided by the artist, up to 100, as well as to the Gallery's regular mailing list of members, press, etc.

11. Promotion by Artist

- i) The Artist agrees to be present with his/her exhibition at the following times and dates _____.
- ii) The Artist agrees to be present for a "meet the artist discussion" or other presentation in connection with the exhibition on _____ 20____, time _____. A separate lecture/presentation agreement shall be completed as required.

12. Installation

The Gallery will be responsible for the hanging and display of the works of art with the Artist in consultation.

13. Copyright

The Gallery will not permit reproductions of the works of art in the exhibition for purposes of sales, rental, loan, or distribution of any kind without the written permission of the Artist.

14. Sales

The Gallery will/will not take commission on sales; purchase enquiries will be directed to the Artist or to his/her designated agent.

15. Third-Party Interest

In the circumstance of an exhibition to be sponsored jointly by the Gallery and another party, the engagement of the co-sponsor is with the full knowledge and mutual consent of the Artist and the Gallery.

16. Criminal Code

All of the works referred to in (1) are to be displayed in the exhibition and no deletion is to be made theretofrom without the consent of the Artist The Gallery can request that scandalous, obscene or immoral work be removed from the exhibition. If the Artist refuses permission, the Gallery has the right to cancel the exhibition without prejudice or penalty to the Artist.

17. *Force Majeure*

In the event that performance of this agreement or any part thereof on the part of the Artist or the Gallery shall be delayed or prevented by an act of God or of the Queen's enemies, physical disability, the acts or regulations of duly constituted public authorities, strikes, civil tumult, epidemic, interruption or delay of transportation services or other causes beyond their respective control, each shall be relieved of their respective obligations hereunder during the period such prevention or delay exists. It is understood and agreed that there shall be no claim for damages by either party hereto for any such prevention or delay.

18. Breaches of Agreement – Gallery

Notwithstanding -- In the event of the Gallery's cancelling the exhibition, it will pay liquidation damages to the Artist according to the following schedule:

- more than 90 days' notice: no fine
- 90 to 30 days' notice: 50% of full exhibition fee
- less than 30 days' notice: the full exhibition fee

19. Breaches of Agreement – Artist

Notwithstanding -- In the event of the Artist's failure to provide the works of art to be exhibited on the date above, thereby causing cancellation to the exhibition, the Artist will pay liquidation damages to the Gallery according to the following schedule:

- more than 90 days' notice: no fine
- 90 to 30 days' notice: 50% of full exhibition fee
- less than 30 days' notice: the full exhibition fee

20. Amendments

All amendments and modifications of this agreement will be with the written mutual consent of both parties.

The Gallery

The Artist

Date

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