

SUBMISSION 2

ARTISTS AND GALLERIES – TRUST ACCOUNTS

An Art Gallery is a unique type of business. Compared to other retail businesses, it has the advantage that it need not buy stock, as most art works are left by the artists on consignment. This has enabled and even, encouraged some people with limited capital to open galleries, relying on income from exhibitions to cover their overhead expenses.

In the early 1990's the art market became quite depressed, sales dropped dramatically, with the result that some galleries had to close their doors, owing artists substantial monies.

Fortunately, over the next 15 years, with the general economy quite buoyant, most commercial galleries had been able to meet their payments to artists, as well as their other commitments and there were very few closures.

However even during this period, we were made aware of some galleries, who did not pay their artists promptly. Artists were forced to wait for months for payment and in a few cases, legal action had to be taken. Let me stress that these problems related to only a few galleries.

Artists generally, find it very distressing and distasteful to request their galleries for payment and are reluctant to confront them. There is no legal, moral or financial justification for galleries using artists' monies, without the artist's consent.

The concern is that over the past two years, the impact of the financial crisis, the Cooper Report and Resale Royalties had an effect on the art market and a number of galleries have been put into liquidation, owing artists substantial moneys.

The only way in which to ensure that the present gallery system is not used to the disadvantage of artists, is for galleries to operate Trust Accounts for their artists, similar to Solicitors and Estate Agents Trust Accounts.

In my view, galleries fall into three major categories in their attitude to Trust Accounts :

1. Galleries that indicated that they are willing to operate through Trust Accounts. These galleries usually keep excellent records, pay their artists promptly and have not previously had financial problems with their artists. However, these galleries have been pressured by their Association to oppose the introduction of Trust Accounts.
2. Galleries that oppose the introduction of Trust Accounts and are morally outraged by the concept. They argue, that the relationship between the gallery and the artist is only based on trust and to bring in financial and legal restrictions, destroy that relationship.

We consider this argument completely untenable, as we feel that a relationship does not deteriorate, simply because the conditions of the relationship are clearly spelt out.

3. Galleries that are reluctant to operate Trust Accounts, because they are in fact using artists' monies as working capital.

And this latter category poses the greatest threat to artists with the advent of Resale Royalty Legislation and the Personal Property Securities Act, the recognition that artists and galleries have an agency relationship is essential, and the operation of a trust account establishes and confirms this arrangement.