

Saskatchewan Use of Artists' Work for Fundraising Purposes



Art auctions are operated as fund-raisers by many different organizations. Whether they view the artist as an exhibiting professional who is contributing a professional's work or as a source of cheap income depends on the auction itself.

Audiences and results also vary. Since all art auctions keep at least part of the sale price of the work, and since none of them could operate without the artists' participation, artists should consider auctions as business opportunities and/or charitable contributions rather than occasions to be grateful for "exposure."

Gifts and donations are solicited from artists as well as initiated by artists themselves. Artists may donate a work to a registered charity, to federal or provincial governments, to a public gallery or other institution or organization, or to another person as a gift. These donations may be intended by the artist as fundraising, exhibition, or charitable opportunities. In order that the artist may realize the best economic and social return for his or her gift, the artist should be aware of the rules that govern Canada Revenue Agency's consideration of donations for income tax purposes.

Wholesaling of artwork by the artist to a fundraiser is possible but is not considered by this document. Where wholesaling takes place, the artist will sell the work outright to the fundraiser, and the fundraiser may add any markup it considers appropriate in order to reach a selling price.

The artist's relationship to fundraising activities and/or invitations to donate should be that of professional to professional. No artist should feel required to offer gifts of his or her time and production as a response to pressure. At the same time, the artist may legitimately think that the opportunity presented outweighs any unfairness of conditions.

This document sets out recommended standards for professional practice in the Saskatchewan visual arts and crafts sector.

The following organizations have endorsed this document:

- » CARFAC Saskatchewan
- » Museums Association of Saskatchewan
- » Organization of Saskatchewan Arts Councils
- » Saskatchewan Arts Alliance
- » Saskatchewan Arts Board
- » Saskatchewan Craft Council
- » Saskatchewan Cultural Industries Development Council
- » Saskatchewan Professional Art Galleries Association
- » Saskatchewan Publishers Group
- » SaskCulture

PROJECT FUNDING



This project is supported by the Creative Industries Growth and Sustainability Program which is made possible through funding provided to the Saskatchewan Arts Board by the Government of Saskatchewan through the Ministry of Tourism, Parks, Culture and Sport.

More best practice standards at www.bestpracticestandards.ca

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This project has been devised based on the "The Code of Practice for the Australian Visual Arts and Craft Sector" Edition 2, developed, commissioned and published by the National Association for the Visual Arts (NAVA).

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This document outlines artists' rights and responsibilities and those of organizers of fundraising events. It provides explanations of Canada Revenue Agency's rules for the charitable donation of artwork and artists' goods. Its intention is to remove uncertainty and exploitation from this financial and presentation resource for both the artist and the user of his or her work.

1 DONATIONS OF ARTWORK

- 1.1 No artist should be expected to donate works of art outright to any organization for fund-raising purposes.
- 1.2 No organization should expect to raise funds through unpaid subsidy by artists' work.
- 1.3 Written contracts must be used. The Saskatchewan Arts Professions Act requires a written contract between artists and engagers. The contract must include specific basic elements which are detailed in the **Checklist For Written Contracts**, provided by the Ministry of Tourism, Parks, Culture and Sport and appended to this document.
- 1.4 If an artist chooses to donate artwork as part of contributing to a community, s/he should be aware of Canada Revenue Agency's regulations regarding charitable donations. See section 2, below. As the donation of artwork may not be in the artist's best interests financially, the artist may be advised to consider a monetary donation instead.

2 DONATIONS OF ARTWORK FOR CHARITABLE PURPOSES – CANADA REVENUE AGENCY

- 2.1 If an artist donates a work to a registered charity, to a federal or provincial government, to a public gallery or other institution, or to another person as a gift, certain Canada Revenue Agency regulations apply.
- 2.2 It is the responsibility of the organizer to apply these regulations appropriately, but both artist and organizer should take tax advice from a specialist.

- 2.3 If an artwork is donated to a registered charity or a government in Canada it must be given a value. The value must be an amount not higher than the work's fair market value and not lower than its cost. This amount becomes the proceeds of disposition, and is used to determine capital gain or income.
- 2.4 Only registered charities may provide a charitable donation receipt when artwork is donated. Charitable receipts must reflect fair market value. This type of donation is dealt with by Canada Revenue Agency in the same way as any other charitable donation, using the information provided in the *General Income Tax Guide*.
- 2.5 When an artist creates a work of art with the intention of selling it but instead donates it, the donation is considered to be a disposition of property from the artist's inventory. Disposition of property by the artist from inventory - the value of the work as described in a charitable donation receipt - must be treated as income by the artist. It is in the artist's best interest to carefully consider the value chosen.
- 2.6 None of the information in this section is offered as tax advice. For any tax questions a specialist should be consulted.

3 PROCEEDS RETURNED TO THE ARTIST

- 3.1 Compensation to artists for the sale of their work for fund-raising purposes should be guided by industry standards for other commercial sales of artwork. It is recommended that the artist should retain a portion of the sale price, to be negotiated in advance.

3.2 Any commissions payable to commercial galleries for the sale of artists' work for fundraising purposes should be negotiated between artist and gallery in advance.

3.3 Artwork should not be sold for fund-raising purposes at below market value. Normally, the artist will establish a Reserve (minimum) price below which the artist reserves the right not to sell the work.

4 ARTISTS' RESPONSIBILITIES

4.1 The artist should provide all information required by the exhibition prospectus and entry forms, including insurance value and reserve price.

4.2 The artist should guarantee that the work is original if it is stated to be so.

4.3 The artist should guarantee that s/he has the right to sell the work.

5 ORGANIZERS' RESPONSIBILITIES

5.1 The organizer should make available a prospectus for the fund-raising event well in advance of the deadline for submissions, including complete information on terms, names of the jurors (if any), deadlines, responsibility for framing, and dates by which work will be returned and payment made. The prospectus should also state clearly what the organizers' intentions are in regard to providing tax-deductible receipts.

5.2 It is the organizer's responsibility to insure the work at full value stated by the artist. The organizer should undertake to protect the artist's copyright on all works submitted and to inform all purchasers that the purchase of work does not constitute purchase of copyright.

5.3 The organizer should return all unsold artwork to the artist and deliver all receipts to the artist. The organizer should also provide a statement of the amount received for the work, and a copy of all published information relating to the event.

5.4 The organizer should assume all costs related to the event, including insurance, publicity, and provision of financial statements and published information.

6 DELIVERY AND CONDITION OF ARTWORK

6.1 Hand deliveries of artwork are acceptable.

6.2 Works should be inspected upon arrival for damages. A written condition report should be kept.

6.3 The artist must be notified immediately if work is received in damaged condition. If shipped work is received in damaged containers, such damaged items should be returned to the artist prepaid pending claims on the insurer, or the organizer may, with the artist's permission, unpack the damaged container with the understanding that no claims for damage to the work will be made against the organizer for the unpacking.

6.4 The organizer is responsible to maintain the artwork in the condition received.

6.5 Unsold artwork should be returned to the artist in packaging comparable to that in which it was originally delivered.

7 DISPLAY OF ARTWORK

7.1 Artwork should be professionally displayed.

8 NO REMOVAL OF ARTWORK

8.1 Neither the artist nor the organizer should remove the artwork during the exhibition or auction without the explicit and written agreement of the other.

CHECK LIST FOR WRITTEN CONTRACTS

provided by the Saskatchewan Ministry of Tourism, Parks, Culture & Sport (2009-06)

www.tpcs.gov.sk.ca/arts-professions-act

The *Arts Professions Act* increases protection for artists and their intellectual property by requiring written contracts between those who engage the services of artists and the artists themselves. The legislation requires the following basic elements be included in each contract:

- the legal names of the engager and the professional artist;
- the effective date of the contract;
- the work, production or enterprise that forms the object of the contract;
- the financial consideration due to the professional artist and the terms and conditions of payment, including the date of the delivery of the work or production or the conduct of the enterprise and the date of the delivery of payment;
- the frequency with which the engager shall report to the professional artist on the transactions made with respect to the work, production or enterprise that is subject to the contract and for which financial consideration remains owing after the contract is entered into;
- the notice and, if applicable, the compensation required if either the engager or the professional artist terminates the contract before its completion;
- dispute resolution mechanisms;
- any transfer of right and any grant of licence consented to by the professional artist, including:
 - a. the purposes of the transfer of right or grant of licence;
 - b. the term of the transfer of right or grant of licence; and
 - c. the jurisdiction in which the transfer of right or grant of licence applies;
- whether any licence granted to an engager is transferable to a third party;
- any limitations on the use of the work or production or the conduct of the enterprise.
- if applicable, any waiver of moral rights within the meaning of section 14.1 of *The Copyright Act* (Canada); and
- in the case of a contract between an engager and an Aboriginal professional artist, the protocols respecting the use of Aboriginal symbols or artifacts or matters of importance to Aboriginal people.

ADDITIONAL CHECK LIST FOR WRITTEN CONTRACTS

If a written contract entered into reserves an exclusive right of the engager over any future use of the work or production of the professional artist, the contract must include the following elements in addition to the elements listed above:

- a description of the work or production;
- a description of the process that the professional artist must follow to terminate the contract after the expiration of a specified period;
- a date on which any exclusive right of the engager over any future use of the work or production of the professional artist or any right of the engager to the work or production expires; and
- any additional elements prescribed in the regulations (at this time there are none).