

INTRODUCTION

The Georgia Consignment of Art Act was enacted in 1995. It established the rights of artists when consigning their art to a dealer. The Act defines a consignment as, “whenever an artist delivers or causes to be delivered a work of art of the artist’s own creation to an art dealer in this state for the purpose of exhibition or sale, or both, on a commission, fee or any other basis of compensation.” (Ga. Code Ann. §10-1-522). The only way for an artist or art dealer to avoid consignment classification would be through an outright sale of the artwork rather than having the art dealer sell the art on the artist’s behalf.

Under the consignment law legal ownership of the artwork does not change and title remains vested in the artist (“Consignor”) until the artist receives full payment for the art. The art dealer’s role is limited to being the artist’s agent, meaning the art dealer has a fiduciary duty to the artist, that is, he works on the artist’s behalf and in the artist’s best interests. The art dealer (“Consignee”) can transfer and convey all of the consignor’s interest to a third party once the terms of the sale have been met. The artwork is held in trust by the art dealer and shall not be subject to any claim by a creditor of the Consignee. Importantly, the artist retains the copyright to the work. An artist cannot legally waive their rights embodied in the Georgia Consignment of Art Act. If an art dealer violates any provision of this Act, the dealer will be liable for fifty dollars, plus actual damages sustained by the artist, and any reasonable attorney fees incurred by the artist.

GEORGIA CONSIGNMENT OF ART ACT

§ 10-1-520. Short Title

This article shall be known and may be cited as the “Georgia Consignment of Art Act.”

§ 10-1-521. Definitions

As used in this article, the term:

- (1) “Art Dealer” means a person engaged in the business of selling works of art, other than a person exclusively engaged in the business of selling goods at public auction, and other than a non-profit organization.
- (2) “Artist” means the person who creates a work of art, or, if such person is deceased, such person’s heir, legatee, or personal representative.
- (3) “Consignment” means that no title to, estate in, or right to possession of the work of art superior to that of the consignor shall vest in the consignee, notwithstanding the consignee’s power or authority to transfer and convey to a third person all of the right, title, and interest of the consignor in and to such work of art.
- (4) “Cooperative” means an association or group of artists which:
 - (A) Engages in the business of selling only works of art which are produced or created by such artists;
 - (B) Jointly owns, operates, and markets such business; and
 - (C) Accepts such works of art from its members on consignment.
- (5) “Person” means an individual, partnership, corporation, association, entity, or other group, however organized.

(6) "Value of the work of art" means an amount agreed upon by written contract as the monetary worth of a work of art which amount shall be used in determining damages in the instance of a violation of this article by an art dealer and shall not be used for any other purpose.

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

(A) A visual rendition, including a painting, drawing, sculpture, mosaic, or photograph;

(B) A work of calligraphy;

(C) A work of graphic art, including an etching, lithograph, offset print, or silk screen;

(D) A craft work in materials, including clay, textile, fiber, wood, metal, plastic, or glass;
or

(E) A work in mixed media, including a collage or a work consisting of any combination of subparagraphs (A) through (D) of this paragraph.

§ 10-1-522. Delivery of artwork to dealer for exhibition or sale in exchange for commission, fee, or other compensation constituting consignment

Notwithstanding any custom, practice, or usage of the trade to the contrary, whenever an artist delivers or causes to be delivered a work of art of the artist's own creation to an art dealer in this state for the purpose of exhibition or sale, or both, on a commission, fee, or other basis of compensation, the delivery to and acceptance of such work of art by the art dealer shall constitute a consignment, unless the delivery to the art dealer is pursuant to an outright sale for which the artist receives or has received full compensation for the work of art upon delivery.

§ 10-1-523. Written contract required for consignment of work of art; violation by art dealer rendering artist's obligation voidable

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

(1) The value of the work of art;

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

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

(b) If an art dealer violates this Code 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.

§ 10-1-524. Effects of consignment

A consignment of a work of art shall result in all of the following:

(1) The art dealer, after delivery of the work of art, shall constitute an agent of the artist for the purpose of sale or exhibition of the consigned work of art within this state;

(2) The work of art shall constitute property held in trust by the consignee for the benefit of the consignor and shall not be subject to claim by a creditor of the consignee;

(3) The consignee shall be responsible for the loss of, or damage to, the work of art; and

(4) The proceeds from the sale of the work of art shall constitute funds held in trust by the consignee for the benefit of the consignor. Such proceeds shall first be applied to pay any balance due to the consignor, unless the consignor expressly agrees otherwise in writing.

§ 10-1-525. Art received as consignment to remain trust property; art received as consignment not subject or subordinate to claims, liens, or security interests

(a) A work of art received as a consignment shall remain trust property, notwithstanding the subsequent purchase thereof by the consignee directly or indirectly for the consignee's own account, until the price is paid in full to the consignor. If such work is thereafter resold to a bona fide purchaser before the consignor has been paid in full, the proceeds of the resale received by the consignee shall constitute funds held in trust for the benefit of the consignor to the extent necessary to pay any balance still due to the consignor and such trusteeship shall continue until the fiduciary obligation of the consignee with respect to such transaction is discharged in full.

(b) No such trust property or trust funds shall be or become subject or subordinate to any claims, liens, or security interests of any kind or nature whatsoever, of the consignee's creditors, anything in Code Section 11-2-326 or any other provision of Title 11 to the contrary notwithstanding.

§ 10-1-526. Contractual waiver of liability for works of art consigned to cooperative

Any cooperative may contract with its members to waive liability for the loss of or damage to works of art consigned to such cooperative. Any other provision of a contract or an agreement whereby the consignor purports to waive any provision of this article is void.

§ 10-1-527. Use or display of work of art or photograph thereof

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

- (1) Notice is given to users or viewers that the work of art is the work of the artist; and
- (2) The artist gives prior written consent to the particular use or display.

§ 10-1-528. Applicability to contracts executed prior to July 1, 1995

This article shall not apply to a written contract executed prior to July 1, 1995, unless either the parties agree by mutual written consent that this article shall apply or such contract is extended or renewed after July 1, 1995.

§ 10-1-529. Liability for violations by art dealers

Any art dealer who violates this article is liable to the artist in an amount equal to:

- (1) Fifty dollars; 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's fees.