

INTRODUCTION

The Limited Edition law which follows was enacted by the Georgia Legislature and became effective July 1, 1986. With the exception of a technical amendment in 1992, its provisions remain in full force and effect. The increased activity by the art collecting public in the purchase of fine art multiples during the last two decades led to the development of standards by print curators which then became the basis for the California Print Law passed in 1971. Subsequently, an Illinois Statute was passed which expanded upon the California Print Law. These statutes gave rise to the Georgia law. They are essentially full disclosure laws requiring vital information to be given to the purchaser putting them on an equal playing field. This kind of disclosure helps the purchaser avoid fakes, forgeries, unlimited editions and misstatements of information that may go to the scarcity and value of the limited edition artwork.

In summary, the Georgia law creates specific definitions applicable to multiples and obligates the art dealer, artist or auctioneer to supply this information to a perspective purchaser. The statute includes specific language which is required to be reproduced in advertising or at point of purchase. The remedies section of the Georgia statute allows a purchaser to recover the cost of the print with interest at the legal rate upon the return of the multiple in the same condition as when received. For willful violations, treble damages are available. The statute of limitations is one year after discovery, and, if discovery of the violation is not made within three years of the sale, then the purchaser's remedies are extinguished. The Georgia statute also provides for the recovery of court costs, attorneys' fees and, uniquely, expert witness fees. The purchaser retains all of his common law rights to proceed against the seller under traditional breach of warranty or fraud, or other applicable statutes. It is recommended that those potentially affected by this law should read the specific provisions of the statute.

GEORGIA LIMITED EDITION ART REPRODUCTION ACT

10-1-430. Definitions.

As used in this part, the term:

- (1) "Art dealer" means a person who is in the business of dealing exclusively or nonexclusively in fine art multiples, a person who by his occupation holds himself out as having knowledge or skill peculiar to fine art multiples or persons to whom that knowledge or skill may be attributed by his employment of an agent or other intermediary who by his occupation holds himself out as having that knowledge or skill, or an auctioneer who sells fine art multiples at public auction. The term shall not include consignors or principals of auctioneers unless such consignor or principals are otherwise specifically defined as art dealers by this paragraph.
- (2) "Artist" means the person who created the image which is contained in or constitutes the master or who conceived of and approved the image which is contained in or constitutes the master.
- (3) "Fine art multiple" or "multiple" means any print, positive or negative photograph, or similar art object produced in more than one copy. The term includes pages or sheets taken from books or magazine but shall not include books or magazines.
- (4) "Limited edition" means fine art multiples produced from a master all of which are the same image and which bear numbers or other markings to denote the limited production thereof to a

stated maximum number of multiples or which are otherwise held out as limited to a maximum number of multiples.

(5) "Master" means a printing plate, stone, block, screen, photographic negative, or other device which contains an image and is used to produce fine art object in multiples.

(6) "Person" means an individual, partnership, corporation, association, or other entity.

(7) "Print" means a multiple produced by, but not limited to, engraving, etching, woodcutting, lithography, and serigraphy and a multiple produced or developed from photographic negatives.

(8) "Proofs" means multiples which are the same as and which are produced in a limited edition from the same master as the multiples but which, whether so designated or not, are set aside from and are in addition to the limited edition to which they relate.

(9) "Signed" means autographed by the artist's own hand, and not by mechanical means of reproduction, after the multiple is produced.

(10) "Written Instrument" means a written or printed agreement, bill of sale, invoice, certificate of authenticity, catalogue, note, memorandum, or label describing a multiple which is to be sold, exchanged, or consigned by an art dealer.

10-1-431. Advertising and sale of multiples.

(a) An art dealer shall not sell or consign a multiple in, into, or out of this state unless a written instrument is furnished to the purchaser or consignee prior to the sale or consignment which sets forth as to each multiple the descriptive information required by Code Section 10-1-432. If a prospective purchaser so requests, the information shall be transmitted to him prior to the payment or placing of an order for a multiple. If payment is made by a purchaser prior to delivery of such a multiple, this information shall be supplied at the time of or prior to delivery. With respect to auctions, this information may be furnished in catalogues or other written materials which are made readily available for consultation and purchase prior to sale, provided that a bill of sale, receipt, or invoice describing the transaction is then provided which makes reference to the catalogue and lot number in which this information is supplied. Information supplied pursuant to this subsection shall be clearly, specifically, and distinctly addressed to each of the items listed in Code Section 10-1-432 unless the required data is not applicable. This Code section is applicable to transactions by and between art dealers and others considered to be art dealers for the purposes of this part.

(b) (1) An art dealer shall not cause a catalogue, prospectus, flyer, or other written material or advertisement to be distributed in, into, or from this state which solicits a direct sale, by inviting transmittal of payment for a specific multiple, unless it clearly sets forth, in close physical proximity to the place in such material where the multiple is described, the descriptive information required by Code Section 10-1-432. In lieu of this required information, the written material or advertising may set forth the material contained in the following quoted passage, or the passage itself, if the art dealer then supplies the required information prior to or with delivery of the multiple. The nonobservance of the terms within the following passage shall constitute a violation of this part:

"Georgia law provides for disclosure in writing of information concerning certain fine prints and photographs prior to effecting a sale of them. This law requires disclosure of such matters as the identity of the artist, the artist's signature, the medium, whether the multiple is a reproduction, the time when the multiple was produced, use of the plate which produced the multiple, and the number of multiples in a 'limited edition.' If a prospective purchaser so requests, the information

shall be transmitted to him prior to payment or the placing of an order for a multiple. If payment is made by a purchaser prior to delivery of the multiple, this information will be supplied at the time of or prior to delivery, in which case the purchaser is entitled to a refund if, for reasons related to matter contained in such information, he returns the multiple in the condition in which received within 30 days of receiving it. In addition, if after payment and delivery, it is ascertained that the information provided is incorrect, the purchaser may be entitled to certain remedies, including refund upon return of the multiple in the condition in which received.”

(2) This requirement is not applicable to general written material or advertising which does not constitute an offer to effect a specific sale.

(c) In each place of business in the state where an art dealer is regularly engaged in sales of multiples, the art dealer shall post in a conspicuous place, a sign which, in a legible format, contains the information included in the following passage: “Georgia law provides for the disclosure in writing of certain information concerning prints and photographs. This information is available to you, and you may request to receive it prior to purchase.”

(d) If an art dealer offering multiples by means of a catalogue, prospectus, flyer, or other written material or advertisement distributed in, into, or from this state disclaims knowledge as to any relevant detail referred to in Code Section 10-1-432, he shall so state specifically and categorically with regard to each such detail to the end that the purchaser shall be able to judge the degree of uniqueness or scarcity of each multiple contained in the edition so offered. Describing the edition as an edition of “reproductions” eliminates the need to furnish further informational details unless the edition was allegedly published in a signed, numbered, or limited edition, or any combination thereof, in which case all of the informational details are required to be furnished.

(e) Whenever an artist sells or consigns a multiple of his own creation or conception, the artist shall disclose the information required by Code Section 10-1-432, but an artist shall not otherwise be regarded as an art dealer.

10-1-432. Descriptive information.

(a) Except as provided in subsections (c), (d), and (e) of this Code section, the following information shall be provided as required by Code Section 10-1-431:

(1) The name of the artist;

(2) If the artist’s name appears on the multiple, a statement whether the multiple was signed by the artist; or if the multiple was not signed by the artist, a statement of the source of the artist’s name on the multiple, such as whether the artist placed his signature on the multiple or on the master, whether his name was stamped or estate stamped on the multiple or on the master, or was from some other source or in some other manner placed on the multiple or on the master.

(3) A description of the medium or process, and where pertinent to photographic processes, the material used in producing the multiple, such as whether the multiple was produced through the etching, engraving, lithographic, serigraphic, or a particular method or material used in photographic developing processes. If an established term, in accordance with the usage of the trade, cannot be employed accurately to describe the medium or process, a brief, clear description shall be made;

- (4) If the multiple or the image on or in the master constitutes a photomechanical or photographic type of reproduction of an image produced in different medium, for a purpose other than the creation of the multiple being described, a statement of this information and the respective mediums;
- (5) If paragraph (4) of this subsection is applicable, and the multiple is not signed, a statement whether the artist authorized or approved in writing the multiple or the edition of which the multiple being described is one;
- (6) If the purported artist was deceased at the time the master was made which produced the multiple, this shall be stated;
- (7) If the multiple is a "posthumous" multiple, that is, if the master was created during the life of the artist but the multiple was produced after the artist's death, this shall be stated;
- (8) If the multiple was made from a master which produced a prior limited edition, or from a master which constitutes or was made from a reproduction of a prior multiple or the master which produced the prior limited edition, this shall be stated as shall the total number of multiples, including proofs, of all other editions produced from that master;
- (9) As to multiples produced after 1949, the year or approximate year the multiple was produced shall be stated. As to multiples produced prior to 1950, state the year, approximate year, or period when the master was made which produced the multiple and when the particular multiple being described was produced. The requirements of this paragraph shall be satisfied when the year stated is approximately accurate;
- (10) Whether the edition is being offered as a limited edition, and if so the authorized maximum number of signed or numbered impressions, or both, in the edition; the authorized maximum number of unsigned or unnumbered impressions, or both, in the edition; the authorized maximum number of artist's, publisher's, or other proofs, if any, outside of the regular edition; and the total size of the edition; and
- (11) Whether or not the master has been destroyed, effaced, altered, defaced, or canceled after the current edition.

(b) If the multiple is part of a limited edition and was printed after July 1, 1986, the statement of the size of the limited edition, as stated pursuant to paragraph (10) of subsection (a) of this Code section, shall also constitute an express warranty that no additional multiples of the same image, including proofs, have been produced in this or in any other limited edition.

(c) If the multiple was produced in the period 1950 to July 1, 1986, the information required to be supplied need not include the information required by paragraphs (5) and (8) of subsection (a) of this Code section.

(d) If the multiple was produced in the period from 1900 to 1949, the information required to be supplied need only consist of the information required by paragraphs (1), (2), (3), and (9) of subsection (a) of this Code section.

(e) If the multiple was produced before the year 1900, the information to be supplied need only consist of the information required by paragraphs (1), (3), and (9) of subsection (a) of this Code section.

10-1-433. Warranties.

(a) (1) Except as provided in paragraph (2) of this subsection, whenever an art dealer furnishes information as required by Code Section 10-1-432, such information shall be a part of the basis of the bargain and shall create express warranties as to the information provided. Such

warranties shall be not be negated or limited because the art dealer in the written instrument did not use formal words such as “warrant” or “guarantee” or because the art dealer did not have a specific intention or authorization to make a warranty or because any required statement is or purports to be the art dealer’s opinion. The existence of a basis in fact for information warranted by virtue of this subsection shall not be a defense in an action to enforce such warranty.

(2) With respect to photographic multiples produced prior to 1950 and other multiples produced prior to 1900, the information required by paragraph (3) of subsection (a) of Code Section 10-1-432 shall be deemed to be correct if a reasonable basis in fact exists for the information provided.

(b) When information is not supplied, this shall constitute the express warrant that such information is not required to be disclosed.

(c) Whenever an art dealer disclaims knowledge as to a particular item about which information is required, such disclaimer shall be ineffective unless clearly, specifically, and categorically stated as to the particular item and contained in the physical context of other language setting forth the required information as to a specific multiple.

10-1-434. Remedies not inclusive.

(a) The rights, liabilities, and remedies created by this part shall be construed to be in addition to and not in substitution, exclusion, or displacement of other rights, liabilities, and remedies provided by law.

(b) Whenever an artist sells or consigns multiples of his own creation, the artist shall incur the obligations prescribed by this part for an art dealer.

(c) An artist or merchant who consigns a multiple to an art dealer for the purpose of effecting a sale of the multiple shall have no liability to a purchaser under this part if such consignor, as to the consignee, has complied with the provisions of this part.

(d) When an art dealer has agreed to sell a multiple on behalf of a consignor who is not an art dealer or when an artist has not consigned a multiple to an art dealer, but the art dealer has agreed to act as the agent for an artist for the purpose of supplying the information required by this part, such art dealer shall incur the liabilities of other art dealers prescribed by this part to purchaser.

(e) When an art dealer is liable to a purchaser pursuant to the provisions of this part, as a result of providing information in the situations referred to in this Code section, as well as when such an art dealer purchased such a multiple from another art dealer, if the art dealer can establish that his liability results from incorrect information which was provided by the consignor, artist, or art dealer to him in writing, and the art dealer who is liable in good faith relied on such information, the consignor, artist, or art dealer shall similarly incur such liabilities as to the purchaser and such art dealer.

10-1-435. Civil remedies for violations.

(a) An art dealer, including a dealer consignee, who offers or sells a multiple, into, or from this state without providing the information required in Code Sections 10-1-431 and 10-1-432 or who provides information which is mistaken, erroneous, or untrue, except for harmless errors such as typographical errors, shall be liable to the purchaser of the multiple. The art dealer’s liability

shall consist of the consideration paid by the purchaser for the multiple, with interest at the legal rate thereon, upon the return of the multiple in the condition in which received by the purchaser.

(b) In any case in which an art dealer, including a dealer consignee, willfully offers or sells a multiple in violation of this part, the person purchasing such multiple may recover from the art dealer, including a dealer consignee, who offers or sells such multiple an amount equal to three times the amount required under subsection (a) of this Code section.

(c) No action shall be maintained to enforce any liability under this Code section unless brought within one year after discovery of the violation upon which it is based and in no event more than three years after the multiple was sold.

(d) In any action to enforce any provision of this part, the court may allow the prevailing purchaser the costs of action together with reasonable attorneys' and expert witnesses' fees. In the event, however, the court determines that an action to enforce was brought in bad faith, it may allow such expenses to the seller as it deems appropriate.

(e) These remedies shall not bar or be deemed inconsistent with a claim for damages or with the exercise of additional remedies otherwise available to the purchaser.

(f) In any proceeding in which an art dealer relies upon a disclaimer of knowledge as to any relevant information set forth in Code Section 10-1-432 for any time period, such disclaimer shall be effective unless the claimant is able to establish that the art dealer failed to make reasonable inquiries, according to the custom and usage of the trade, to ascertain the relevant information or that such relevant information would have been ascertained as a result of such reasonable inquiries.

10-1-436. Civil penalties; injunctions.

(a) Whenever the Attorney General or any district attorney has reason to believe that any person is violating any provision of this part, he may bring an action against such person to restrain or enjoin continued violations. With the exception of consent judgments entered before any testimony is taken, a final judgment under this Code section is admissible as prima facie evidence of such specific findings of fact as may be made by the court which enters the judgment in subsequent proceedings by or against the same person or his successors or assigns.

(b) Any person who violates any provision of this part may be liable for a civil penalty not to exceed \$500.00 for each violation. Such penalty may be assessed and recovered in a civil action brought by the Attorney General or any district attorney.

10-1-437. Exemptions.

(a) This part shall not apply to any fine art multiple when offered for sale or sold at wholesale or retail for \$100.00 or less, exclusive of any frame.

(b) Any charitable organization which conducts a sale or auction of fine art multiples shall be exempt from the disclosure requirements of this part if it posts in a conspicuous place, at the site of the sale or auction, a disclaimer of any knowledge of the information specified in Code Section 10-1-432 and includes such a disclaimer in a catalogue, if any, distributed by the organization with respect to the sale or auction of fine art multiples. If a charitable organization uses or employs an art dealer to conduct a sale or auction of fine art multiples, the art dealer shall be subject to all disclosure requirements otherwise required of an art dealer under this part.