

New York State Consolidated Laws

Arts and Cultural Affairs

ARTICLE 15

SALE OF VISUAL ART OBJECTS AND SCULPTURES PRODUCED IN MULTIPLES

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S 15.01. Full disclosure in the sale of certain visual art objects produced in multiples.

1. An art merchant shall not sell or consign a multiple in, into or from this state unless a written instrument is furnished to the purchaser or consignee, at his request, or in any event prior to a sale or consignment, which sets forth as to each multiple the descriptive information required by this article for the appropriate time period. 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 an art 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 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 such information is supplied. Information supplied pursuant to this subdivision shall be clearly, specifically and distinctly addressed to each item as required by this article for any time period unless the required data is not applicable. This section is applicable to transactions by and between merchants, non-merchants, and others considered art merchants for the purposes of this article.

2. An art merchant 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 this article for the appropriate time period. In lieu of this required information, such written material or advertising may set forth the material contained in the following quoted passage, or the passage itself, containing terms the nonobservance of which shall constitute a violation of this article, if the art merchant then supplies the required information prior to or with delivery of the multiple:

"Article fifteen of the New York arts and cultural affairs law provides for disclosure in writing of certain information concerning multiples of prints and photographs when sold for more than one hundred dollars (\$100) each, exclusive of any frame, and of sculpture when sold for more than fifteen hundred dollars, 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 master 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 such an art 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 substantially in the condition in which received, within thirty 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."

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

3. In each place of business in the state where an art merchant is regularly engaged in sales of multiples, the art merchant shall post in a conspicuous place, a sign which, in a legible format, contains the information included in the following passage:

"Article fifteen of the New York arts and cultural affairs law provides for the disclosure in writing of certain information concerning prints, photographs and sculpture. This information is available to you in accordance with that law."

S 15.03. Information required. The following information shall be supplied, as indicated, as to each multiple produced on or after January first, nineteen hundred eighty-two:

1. Artist. State the name of the artist.

2. Signature. If the artist's name appears on the multiple, state whether the multiple was signed by the artist. If not signed by the artist then state the source of the artist's name on the multiple, such as whether the artist placed his signature on the master, whether his name was stamped or estate stamped on the multiple, or was from some other source or in some other manner placed on the multiple.

3. Medium or process. (a) Describe 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 etching, engraving, lithographic, serigraphic or a particular method and/or material used in the 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.

(b) If the purported artist was deceased at the time the master was made which produced the multiple, this shall be stated.

(c) If the multiple or the image on or in the master constitutes a mechanical, photomechanical, hand-made or photographic type of reproduction, or is a reproduction, of an image produced in a different medium, for a purpose other than the creation of the multiple being described, this information and the respective mediums shall be stated.

(d) If paragraph (c) of this subdivision is applicable, and the multiple is not signed, state whether the artist authorized or approved in writing the multiple or the edition of which the multiple being described is one.

4. Use of master. (a) 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.

(b) 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 of a master which produced prior multiples, this shall be stated.

5. Time produced. As to multiples produced after nineteen hundred forty-nine, state the year or approximate year the multiple was produced. As to multiples produced prior to nineteen hundred fifty, state the year, approximate year or period when the master was made which produced the multiple and/or when the particular multiple being described was produced. The requirements of this subdivision shall be satisfied when the year stated is approximately accurate.

6. Size of the edition. (a) If the multiple being described is offered as one of a limited edition, this shall be so stated, as well as the number of multiples in the edition, and whether and how the multiple is numbered.

(b) Unless otherwise disclosed, the number of multiples stated pursuant to paragraph (a) of this subdivision shall constitute an express warranty, as defined in section 13.01 of this title, that no additional numbered multiples of the same image, exclusive of proofs, have been produced.

(c) The number of multiples stated pursuant to paragraph (a) of this subdivision shall also constitute an express warranty, as defined in section 13.01 of this title, that no additional multiples of the same image, whether designated "proofs" other than trial proofs, numbered or otherwise, have been produced in an amount which exceeds the number in the limited edition by twenty or twenty percent, whichever is greater.

(d) If the number of multiples exceeds the number in the stated limited edition as provided in paragraph (c) of this subdivision, then state the number of proofs other than trial proofs, or other numbered or unnumbered multiples, in the same or other prior editions, produced from the same master as described in paragraph (b) of subdivision four of this section, and whether and how they are signed and numbered.

S 15.05. Information required; nineteen hundred fifty to January first, nineteen hundred eighty-two.

The information which shall be supplied as to each multiple produced during the period from nineteen hundred fifty to January first, nineteen hundred eighty-two, shall consist of the information required by section 15.03 of this article except for paragraph (d) of subdivision three, paragraph (b) of subdivision four and paragraphs (c) and (d) of subdivision six of such section.

S 15.07. Information required; nineteen hundred to nineteen hundred forty-nine.

The information which shall be supplied as to each multiple produced during the period from nineteen hundred through nineteen hundred forty-nine shall consist of the information required by section 15.03 of this article except for paragraphs (b), (c) and (d) of subdivision three and subdivisions four and six of such section.

S 15.09. Information required; pre-nineteen hundred.

The information which shall be supplied as to each multiple produced prior to nineteen hundred shall consist of the information required by section 15.03 of this article except for subdivision two, paragraphs (b), (c) and (d) of subdivision three and subdivisions four and six of such section 15.03.

S 15.10. Information required for sculptures.

1. The following information shall be supplied as indicated in a written instrument as to each multiple produced, fabricated or carved, on or after January first, nineteen hundred ninety-one:

(a) Artist. State the name of the artist.

(b) Title. State the title of the sculpture.

(c) Foundry. State the name, if known, of the foundry which or person who produced, fabricated or carved the sculpture.

(d) Medium. Describe the medium or process used in producing the multiple. 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.

(e) Dimensions. State the dimensions of the sculpture.

(f) Time produced. State the year the sculpture was cast, fabricated or carved.

(g) Number cast. State the number of sculpture casts, according to the best information available, produced or fabricated or carved as of the date of the sale.

(h) If the purported artist was deceased at the time the sculpture was produced, this shall be stated.

(i) Use of master. State whether the sculpture is authorized by the artist or, if produced after the artist's death, whether it was authorized in writing by the artist or by the estate, heirs or other legal representatives of the artist. In the event of a sale after the initial sale, the art merchant may disclose in writing evidence of such reasonable inquiries as have been made pursuant to subdivision two of section 15.15 of this article and any information imparted as may be relevant in fulfilling the intent of this paragraph.

2. For limited edition sculpture produced on or after January first, nineteen hundred ninety-one, in addition to the information required to be provided pursuant to subdivision one of this section, the following items of information shall also be provided to the purchaser in a written instrument:

(a) whether and how the sculpture and the edition is numbered;

(b) the size of the edition or proposed edition and the size of any prior edition or editions of the same sculpture, regardless of the color or material used;

(c) whether additional sculpture casts have been produced in excess of the stated size of the edition or proposed edition and, if so, the total number of such excess casts produced or proposed to be produced and whether and how they are or will be numbered according to the stated intention of the artist or a statement that the artist has not disclosed his intention about the number of additional casts or their numbering. Additional sculpture casts shall include all casts from the same master regardless of their color, material or size; and

(d) whether the artist has stated in writing a limitation on the number of additional sculpture casts to be produced in excess of the stated size of the edition or proposed edition and, if so, the total number of such excess casts produced or proposed to be produced and whether and how they are or will be numbered according to the stated intention of the artist or the estate, heirs or other legal representatives of the artist or a statement that the artist has not disclosed his intention about the number of additional casts or their numbering. Additional sculpture casts shall include all casts from the same master regardless of their color, material or size.

3. For copies of sculpture not made from the master and produced after January first, nineteen hundred ninety-one, in addition to the information required to be provided pursuant to subdivisions one and two of this section, the following items of information shall also be provided to the purchaser in a written instrument:

(a) the means by which the copy was made;

(b) whether the copy was authorized by the artist or the estate, heirs or other legal representatives of the artist; and

(c) whether the copy is of the same material and size as the master.

S 15.11. Express warranties.

Information provided pursuant to the provisions of this article shall create an express warranty pursuant to section 13.05 of this title. When such information is not supplied because not applicable, this shall constitute an express warranty that such required information is not applicable.

S 15.13. Construction.

1. The rights, liabilities and remedies created by this article shall be construed to be in addition to and not in substitution, exclusion or displacement of other rights, liabilities and remedies provided by law, except where such construction would, as a matter of law, be unreasonable.

2. Whenever an artist sells or consigns a multiple of his own creation, the artist shall incur the obligations prescribed by this article for an art merchant, but an artist shall not otherwise be regarded as an art merchant.

3. An artist or merchant who consigns a multiple to a merchant for the purpose of effecting a sale of the multiple shall have no liability to a purchaser under this article if such consignor, as to the consignee, has complied with the provisions of this article.

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

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

S 15.15. Remedies and enforcement.

1. An art merchant, including a merchant consignee, who offers or sells a multiple in, into or from this state without providing the information required by this article for the appropriate time period, or who provides required information which is mistaken, erroneous or untrue, except for harmless errors such as typographical errors, shall be liable to the purchaser to whom the multiple was sold. The merchant's liability shall consist of the consideration paid by the purchaser with interest from the time of payment at the rate prescribed by section five thousand four of the civil practice law and rules or any successor provisions thereto, upon the return of the multiple in substantially the same condition in which received by the purchaser. This remedy shall not bar or be deemed inconsistent with a claim for damages or with the exercise of additional remedies otherwise available to the purchaser.

2. In any proceeding in which an art merchant relies upon a disclaimer of knowledge as to any relevant information required by this article for the appropriate time period, such disclaimer shall be effective only if it complies with the provisions of section 13.05 of this title, unless the claimant is able to establish that the merchant 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.

3. (a) The purchaser of such a multiple may recover from the art merchant an amount equal to three times the amount recoverable under subdivision one of this section if an art merchant offers, consigns or sells a multiple and:

(i) willfully fails to provide the information required by this article for the appropriate time period;

(ii) knowingly provides false information; or

(iii) the purchaser can establish that the merchant willfully and falsely disclaimed knowledge as to any required information.

(b) Pursuant to subparagraphs (i) and (ii) of paragraph (a) of this subdivision, a merchant may introduce evidence of the relevant usage and custom of the trade in any proceeding in which such treble damages are sought. This subdivision shall not be deemed to negate the applicability of article thirteen of this chapter as to authenticity and article thirteen is applicable, as to authenticity, to the multiples covered by the provisions of this article.

4. In any action to enforce any provision of this article, the court may allow the prevailing purchaser the costs of the 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 art merchant as it deems appropriate.

5. An action to enforce any liability under this article shall be brought within the period prescribed for such actions by article two of the uniform commercial code.

S 15.17. Enjoining violations.

Any violation of this article or of section 14.05, 14.06 or 14.07 of this chapter shall be deemed to be unlawful for the purposes of invoking sections three hundred forty-nine and three hundred fifty of article twenty-two-A of the general business law, and any person who engages in repeated violations of this article shall be deemed to have demonstrated the persistent fraud or illegality necessary to invoke subdivision twelve of section sixty-three of the executive law. The attorney general may bring an action pursuant to article twenty-two-A of the general business law or a proceeding pursuant to subdivision twelve of section sixty-three of the executive law to enjoin violations of this article and seek restitution for any person entitled thereto. In any such action or proceeding, the attorney general may recover, in addition to any other relief provided in those statutes, a civil penalty of not more than five hundred dollars to be forfeited to the state, provided, however, that with respect to actions brought pursuant to this section to which article twenty-two-A of the general business law applies, the foregoing civil penalty shall be in lieu of any penalty set forth therein. In connection with any such proposed action or proceeding, the attorney general is authorized to take proof and make a determination of the relevant facts, and to issue subpoenas in accordance with the civil practice law and rules.

S 15.19. Application of the article.

This article shall apply to the visual art objects governed by this article which are sold, offered for sale, consigned or possessed with intent to sell in, into or from this state. With respect to such multiples compliance with this article shall commence six months after January first, nineteen hundred eighty-five.