

# CALIFORNIA RESALE ROYALTY ACT

## AN ART SELLER'S GUIDE

The California Resale Royalty Act (California Civil Code section 986) requires a seller of art in the secondary market to pay a resale royalty to the artist under certain circumstances. This California law is unique in the United States, although it is a well-established legal right in some other countries and is being considered for adoption by many more. The right of artists to share in the appreciated value of their works when resold is important both in principle and in dollars. This flyer is meant to help orient sellers to the law, but is not a substitute for reading the full Code.

### ➔ FUNDAMENTAL OBLIGATION OF SELLERS

Under circumstances that trigger a resale royalty, the California Resale Royalty Act requires the seller to pay five percent of the full resale price to the artist or a deceased artist's legal heir(s), legatee(s) or personal representative within 90 days of the sale. A "seller" may be the private owner selling the work, gallery, dealer, broker, museum,

auction house or other person acting as the agent for the owner/seller. Sellers' agents are prudent to advise the private owner selling the work of this requirement in advance of the sale as the royalty is paid by the owner. The payment of the royalty may not be decreased or waived by any party.

### ➔ CIRCUMSTANCES GENERATING A ROYALTY PAYMENT

Under California Civil Code Section 986, an artist shall be entitled to a royalty upon the resale of his/her work of art provided that:

- The seller resides in California or the sale takes place in California. [California residents who sell the art outside the state do not remove their obligation to pay a royalty to the artist.]
- The artist at the time of the sale is a United States citizen or has been a California resident for at least two years.
- The work is an original painting, drawing, sculpture or original work of art in glass.
- The work is sold by the seller for more money than she or he paid.
- The work is sold for a gross price of more than \$1,000.
- The work is exchanged for one or more works of fine art, or for a combination of cash, other property, and one or more works of fine art, with a fair market value of more than \$1,000.
- The work is sold during the artist's lifetime or within 20 years of the artist's death.

At the same time, however, the California Resale Royalty Act does not apply if:

- The sale is the initial sale of the work and the legal title of the work at the time of such initial sale is vested in the artist.
- The resale of fine art is by an art dealer to a purchaser within 10 years after the initial sale by the artist to an art dealer, provided that all intervening sales are between art dealers.
- The sale consists of a work of stained glass artistry permanently attached to real property and it was sold as part of the sale of the real property to which it was attached.

## ➔ INABILITY TO LOCATE THE ARTIST

At times, a seller may be unable to locate and pay the artist within 90 days of the sale. In such cases, the seller is required to send the amount of the royalty to the California Arts Council (CAC), a state agency, to deposit into a Special Deposit Fund in the State Treasury. The CAC actively works to locate the artist and distribute those funds to the artist or deceased artist's legal heirs, legatees or personal representative in a timely manner. In addition, the CAC maintains online lists of artists who have not responded to CAC notifications or for whom contact information has not been found. If the artist or rightful claimant to a deceased artist's royalty fails to claim the royalty or the CAC is unable to locate the artist or deceased artist's legal heirs, legatees or personal representative within seven years of the sale, the funding reverts to the California Arts Council for use in its Art in Public Buildings Program.

## ➔ RECOURSE OF THE ARTIST

If the resale royalty is not paid by the seller as per the Civil Code, the artist may bring a legal action for damages within three years of the sale or within one year after discovery of the sale, whichever is longer. The prevailing party will be entitled to reasonable attorney fees as determined by the court. Any royalties held by a seller for artists are exempt from enforcement of a money judgment by the creditors of the seller or seller's agent.

## ➔ LEGAL HELP FOR ARTISTS OR SELLERS

California Lawyers for the Arts (CLA), a statewide nonprofit, serves the arts field through a number of programs. CLA offers educational seminars on various topics throughout the year, some of which include information on the California Resale Royalty Act. In addition, CLA operates a lawyer referral service under the authority of the State Bar of California. CLA matches artists, arts organizations and others in the California arts community with lawyers who have a special interest and the necessary expertise to work with those clients on the specific issues involved. It also provides Arts Arbitration and Mediation Services, a neutral service to help parties work out conflict situations without going to court.

## ➔ ONLINE RESOURCES

- California Resale Royalty Act information on the California Arts Council website (includes lists of artists who have not responded to the CAC's notifications and for whom contact information is sought): [www.arts.ca.gov/artsinfo/resaleroyalty.php](http://www.arts.ca.gov/artsinfo/resaleroyalty.php)
- Full California Civil Code (Code 986) of the Resale Royalty Act: ([linked at webpage above](#))
- California Lawyers for the Arts: [www.CAlawyersforthearts.org](http://www.CAlawyersforthearts.org)
- Download copies of this flyer: [www.arts.ca.gov/artsinfo/files/sellerguide2.pdf](http://www.arts.ca.gov/artsinfo/files/sellerguide2.pdf)

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