

ART GALLERIES, ARTISTS, AND CREDITORS: TAKE NOTE OF AMENDED CONSIGNMENT PROVISIONS

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Many artists sell art through galleries on consignment, with commissions typically ranging from 10 to 50 percent. Art galleries, artists, and creditors in New York State should take note of changes in the New York Arts & Cultural Affairs Law pertaining to consignments.

The changes in the law are intended to provide better protection to artists, especially in the wake of the 2007 collapse of a large gallery on New York City's Upper East Side that left many artists high and dry because consignment monies had been comingled and dissipated.

The law requires art galleries to treat consignment funds as trust funds and keep them separate from other funds. The changes, which took effect November 6, 2012, strengthen the trust fund provisions and give them teeth, including making violations a misdemeanor. Also, the law now allows an artist to bring a private right of action to enforce the law, and a court may award attorney's fees in an appropriate case.

The changes also clarify that children of deceased artists can be considered "heirs" under the law and thus entitled to receive the trust funds. Prior to the changes, creditors seizing the assets of the Manhattan gallery had argued that the law technically did not cover the artist's children.

Art galleries will want to review their standard consignment agreements and possibly add provisions that track changes in the law regarding waivers of certain statutory provisions. Creditors will want to familiarize themselves with the law's trust fund provisions. Finally, artists will want to be aware that additional protections exist under the amended law.