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For fine art transactions, it's best to read the fine print

California art transactions sit within ordinary commercial law, but art-specific statutes can displace familiar assumptions about freedom of contract, remedies and risk allocation — making a generic commercial-sales form an imperfect fit.

By Jeff Miles

California art transactions sit at the intersection of ordinary commercial law and a specialized statutory framework bespoke for the art market. A painting, drawing, print, sculpture or mixed media work generally qualifies as a "good," so an outright sale ordinarily falls within Division 2 of the California Commercial Code, California's enactment of Article 2 of the Uniform Commercial Code.

But California also has art-specific statutes that can displace ordinary assumptions about freedom of contract, remedies and risk allocation. Counsel drafting or reviewing an art sale or consignment agreement should resist the temptation to rely on a generic commercial-sales form without at least knowing the statutory landscape in which the contract sits in situ in California.

The better approach is to treat the transaction as a sale of goods while also accounting for the market-specific issues that commonly drive art disputes: authorship, authenticity, condition, provenance, title, resale logistics, insurance and statutory limits on contractual risk shifting. Not to mention lurking fiduciary duties for consignees that you can't contract around at all.

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I. Enforceability and the statute of frauds

The threshold drafting issue is enforceability. Under California Commercial Code section 2201, a contract for the sale of goods priced at $500 or more generally is unenforceable unless supported by a signed record sufficient to show that a contract was made. The writing need not include every term, but careful drafting should identify the artwork, state the quantity — usually one specifically identified work — and address the price, payment timing, delivery obligations and any closing conditions. Email confirmations and electronic signatures may help, but a comprehensive purchase agreement or bill of sale is the safer course. In informal transactions that begin with a studio visit and end with a follow-up Venmo payment or cash-and-carry exchange, prudent collectors, artists, and gallerists would be well advised to document the deal they intend to memorialize.

II. Authenticity warranties and the significance of *Keith v. Buchanan*

Representations and warranties frequently determine the outcome of art-sale disputes. Buyers commonly seek assurances regarding good title, authority to sell, and the absence of undisclosed liens or competing claims. They may also request warranties concerning the artist, date, medium, dimensions, edition number, signature, certificates of authenticity, exhibition history and provenance. Sellers, galleries and auction participants often attempt to limit reliance to written statements and to disclaim other warranties where permitted. The agreement should therefore distinguish with care between binding factual representations and nonbinding opinions because authenticity disputes often turn on that line.

California's leading case on the line between an actionable factual affirmation and mere "puffing" under Commercial Code section 2313 did not involve art, but it applies directly to authenticity representations. In *Keith v. Buchanan*, 173 Cal. App. 3d 13 (1985), the Court of Appeal held that an express warranty can arise from sales brochures and other precontract statements, not just from the final written agreement. Brian Keith purchased a sailboat from James Buchanan and others, relying on sales brochures that described the vessel as seaworthy, but a dispute arose regarding its seaworthiness after delivery. The Court of Appeal held that an express warranty was created under the California Uniform Commercial Code, reversing the trial court's finding that no express warranty existed.

The reliance holding is especially important. The court held that a buyer need not prove actual reliance on the seller's statement to enforce it as an express warranty. A warranty statement made by a seller is presumptively part of the basis of the bargain, and the burden shifts to the seller to prove that the resulting bargain does not rest at all on the representation. As a result, catalog descriptions, condition reports, and provenance narratives supplied by a gallery or auction house may bind the seller. For sellers, generic disclaimer language may not be enough. Nonreliance and integration clauses should identify precisely that no precontract statement survives as warranty, expressly disclaiming any precontract catalog descriptions, condition reports and provenance narratives.

III. Title, risk of loss, delivery and insurance

Art transaction agreements should also address title transfer, risk of loss, delivery and insurance with specificity. The parties should state when title passes, when risk shifts, who is responsible for packing and shipping, who procures insurance, and what consequences follow if the work is damaged before delivery. Condition reports, photographs and inspection periods can reduce later factual disputes. If the buyer's performance is conditioned on financing, expert review, export clearance or museum approval, those conditions should be stated expressly and should specify the consequences if those conditions are not satisfied.

IV. Fine prints, disclosure duties and statutory remedies

Prints and other fine art multiples trigger an additional statutory regime. The California Print Dealers Act, Civil Code sections 1740 through 1745–sometimes called the Farr Act — requires art dealers to disclose or affirmatively disclaim specified information about each print offered for sale, whether in a catalog or at the point of sale. The disclosed information must include the identity of the artist, whether the work is signed by the artist, the medium or process used, the production date, details regarding the use of the plate that produced the multiple, and the edition size if it is a limited edition. The law is designed to help buyers evaluate value in the otherwise opaque world of fine art prints, where it is not always entirely clear the method of production, if more prints might be made after the collector's purchase, and other ambiguities inherent in marketing multiples.

In *Grogan-Beall v. Ferdinand Roten Galleries, Inc.*, 133 Cal. App. 3d 969 (1982), the Court of Appeal reversed a verdict in favor of a class of buyers, finding that the conditionally certified class had been wrongly certified, where individual issues predominated on a print-by-print basis, and that recovery had required plaintiffs to tender the prints back to the dealer first. For lawyers and dealers, the lesson is that print-disclosure obligations are not merely best practices. They carry statutory remedies that include rescission and trebledamages for willful violations of the Act, independent of the sales contract.

V. Artist consignments and the nonwaivable statutory floor

California has special rules for consignments of fine art by artists to art dealers. Civil Code sections 1738 and 1738.5 define covered fine art and provide that delivery of an artist's own work to a California art dealer for exhibition or sale on commission generally creates a consignment, unless the artist is fully paid in an outright sale at delivery. Civil Code section 1738.6 treats the dealer as the artist's agent, makes the artwork and sale proceeds trust property for the artist, protects them from the dealer's creditors, and makes the dealer responsible for loss or damage.

The Court of Appeal has made clear that these protections are not merely default rules that sophisticated parties may modify by contract. In *Pelletier v. Eisenberg*, 177 Cal. App. 3d 558 (1986), an artist consigned 10 paintings to a gallery, and nine were destroyed in a fire. The court held that, under Civil Code section 1738.6(c), the consignee was responsible for the loss or damage to the consigned art, and that any contractual waiver of that protection was void under section 1738.8. The court also held that the artist was entitled to the full fair market value of the destroyed paintings, not a wholesale figure reduced by the dealer's commission.

A parallel dispute now unfolding in New York illustrates why these nonwaivable trust protections also matter well beyond California's borders in our nation's art business capital. In July 2026, painters Daniel Um and Nastaran Shahbazi sued important New York gallery "The Hole" and its founder, Kathy Grayson, an art world impresario and acolyte who came up under famous dealer Jeffrey Deitch, in New York County Supreme Court, alleging that the gallery sold the artists' consigned paintings, collected the proceeds, and failed to pay them a combined amount the complaint places at roughly $50,000. *Daniel Um, et al. v. The Hole NYC LLC et al.*, Docket No. #: 654192/2026 (N.Y. Sup. Ct. 2026).

The complaint further alleges Grayson and "The Hole" instead treated the sale proceeds as general operating cash and used the money to pay rent, other creditors and other artists, while the plaintiffs went unpaid for more than a year. *Id.* The suit asserts claims for violation of New York's own parallel consignment statute, breach of fiduciary duty as trustee of the artists' proceeds, conversion, and breach of the consignment contracts, and seeks the unpaid amounts, interest, punitive damages, attorneys' fees and an accounting. The artists also allege Grayson is personally liable, asserting alter ego liability, as they allege she fully dominated and controlled the gallery, personally directing how incoming funds were spent.

The claims track California's Civil Code section 1738.6 almost feature for feature: New York's own consignment statute likewise treats the dealer as the artist's agent, makes sale proceeds trust property that cannot be commingled with the gallery's operating funds or reached by its creditors, and — as in California — does not allow that protection to be waived.

The drafting implication is significant. Indemnity caps, limitation-of-liability clauses, and "as-is" language that might limit exposure in an ordinary commercial consignment do not operate the same way in the art business setting, at least in California and New York. Written consignment agreements remain essential, but in this regard, the consignee cannot vary statutory liabilities as a trustee of the consignor.

VI. Drafting takeaways

For high-value art, the art sales or consignment agreement should do more than document the transfer. It should allocate risk in light of the portions of California law that the parties may shape by contract and those they may not. By combining Commercial Code fundamentals with awareness of art-specific warranties, required Print Dealers Act disclosures, and California's nonwaivable consignment protections, practitioners can reduce uncertainty while preserving the commercial flexibility art transactions require.

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