

California's Royal Treatment of Artists

As artists' reputations grow, often does the desirability and value of their works of art. Too often, however, many artists miss out on the appreciated value of their art when it is resold by galleries, dealers, auction houses and private collectors. The perceived unfairness here lies in the reality that the appreciated value of the art is, in large part, the result of the artist's efforts throughout his or her artistic career.

Early in the twentieth century, France recognized the growing injustice encountered by artists who struggled in poverty to produce art, only to be overlooked when their works resold at significant prices – money never shared with the artists themselves. In 1920, the French Parliament enacted *le Droit de Suite*,¹ “the follow-up right,” which required a percentage of a work's resale price be paid to the artist or the artist's heirs. Italy, Germany and Switzerland followed France's lead by enacting similar royalty laws.

The United States has never provided such a right, nor has any state except California, which enacted the *California Resale Royalties Act*, (the “Act”)² in 1977. Akin to *le Droit de Suite*, the Act requires sellers to pay artists a 5 percent royalty of the resale price for their original works of fine art.

The Act has several requirements and exceptions. Generally, the seller must be a California resident or the resale must take place in California. The resale price must be at least \$1000.00, and more than that originally paid for by the seller. Also, the artist must be an American citizen or a California resident for the three years prior to the resale. Finally, the work must be either an original painting, sculpture, drawing or original work of art in glass.³

¹ Ashley, *A Critical Comment on California's Droit de Suite, Civil Code Section 986*, 29 Hastings L.J. 249 (1977).

² California Civil Code Section 986

³ California Civil Code Section 986

The Act applies to sellers, auctioneers, galleries, dealers, museums, and other agents of the seller.⁴ If the artist cannot be located within 90 days of the resale, the Act requires the seller to transfer the royalty to the California Arts Council, which pays royalties to those artists it can locate within seven years. Unclaimed royalties are then allotted to the Council's *Art in Public Buildings Program*.⁵

Many artists are not familiar with the Act, and those who are often hesitate to enforce it. Many feel uncomfortable asking for the royalty – or even for information regarding subsequent purchases of their fine art. A common misconception is that art galleries are not required to disclose information about sales to private purchasers. Under California Penal Code Section 536(a), such information is required by law; failure to provide this information upon the artist's written demand is punishable by a misdemeanor.

For more information on the California Resale Royalties Act, contact the California Arts Council at (916) 322-6555 or www.cac.ca.gov.resale.com, or contact the author at robyn@artcounsel.com.

⁴ Sales by art dealers within the first 10 years of the initial sale are exempt from the Act.

⁵ California Govt. Code Section 15813 et seq.