

CODE

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OF

ETHICS

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FOR

ART

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GALLERIES

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2016

COMITÉ PROFESSIONNEL DES GALERIES D'ART

**The purpose of this Code of Ethics is to specify the rights and obligations of art galleries and dealers. It defines the professional relations with artists and an artist's successors in title, presents relations with buyers and sellers, and relations between confreres.**

**The stipulations are based on the applicable legislation, case law and regulations. They are also based on accepted common practice within the profession, respecting the interests of each person.**

**Galleries that belong to the Professional committee of art galleries act in accordance with their legal obligations and undertake to comply with this Code of Ethics.**

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# 1

**RELATIONS  
WITH ARTISTS  
AND THEIR  
SUCCESSORS  
IN TITLE**

## Reciprocal interests



The interests of the gallery and of the artist that it represents are inextricably linked. Consequently, their professional relations are based on trust and evolve with the aim of achieving long-term collaboration.

On principle, the artist and the gallery are bound by a verbal or written agreement, carried out in good faith, involving a sales mandate, responsibility towards the works and financial terms and conditions.

The gallery has similar responsibilities toward an artist who is still alive, and toward the successors in title of a deceased artist. The Professional committee of art galleries recommends that the conditions for collaboration between galleries and artists or their successors in title should be formalised in writing.

## The gallery owner

1.1

The gallery owner is appointed by the artist or his successors in title to promote, distribute and sell his works.

### Advises

1.1.1

The gallery owner advises the artist he represents about how to develop and build his career; he offers support, adopting an attitude that is both benevolent and critical towards his work and creations.

1.1.1.a

Similarly, the gallery owner advises his successors in title in order to increase the value of the work of a deceased artist.

1.1.1.b

### Exhibits

1.1.2

The gallery owner organises exhibitions and does everything

1.1.2.a

possible to present the artist's work in optimum conditions, by mutual agreement with the artist.

1.1.2.b

A gallery that belongs to the Professional committee of art galleries cannot on any account charge an artist a rental fee for its picture rails or any other space in the gallery, for the purposes of presentation, exhibition or promotion.

1.1.3

### Promotes

1.1.3.a

The gallery owner has the role of an intermediary between the artist and institutional or private collectors and art professionals. He can promote contacts with journalists and art critics. In this way, the gallery owner improves the artist's visibility, putting him in touch with all professionals likely to contribute to his fame.

1.1.3.b

The gallery owner develops communication tools in order to promote the artist and his works. He creates archives of the artist's work (articles, reviews, photographs etc.).

1.1.3.c

For a deceased artist, given that his work is now completed, the gallery owner who represents him, in agreement with his successors in title, promotes his work and enhances its value. He takes part in scientific and historical research on the works (catalogues raisonnés, authentication, valuations etc.) thereby contributing to recognition of the deceased artist.

1.1.4

### Produces

First market galleries are sometimes required to produce or co-produce a work in connection with an exhibition linked to their activities in a gallery and at a trade fair, or during an external exhibition in an institution or a foreign gallery.

### Sells

1.1.5

The gallery owner looks for the best terms of sale and investment conditions for his works, whether in private or public collections, for the artist he represents.

1.1.5.a

When an artist dies, the gallery honours the commitments made, looks after the interests of the successors in title, and if necessary negotiates new conditions for collaboration.

1.1.5.b

## The artist or his successors in title

1.2

### Creates

1.2.1

In return for the gallery's work, the artist proposes lasting and completed works, intended for sale.

1.2.1.a

For that purpose, he deals personally with any third-party rights to the works and holds the gallery harmless from all claims: for example copyrights in the event of collaboration, intellectual property rights, rights to use works or pre-existing elements included in the work, and property rights of third parties to the work.

1.2.1.b

The artist proposes a certain number of works. The gallery owner and the artist select those that will be presented and offered for sale.

1.2.1.c

### Makes visible – Communicates

1.2.2

The artist or his successors in title undertake to provide all of the elements required to promote the works: biographical and bibliographical information, photographs and any other documentation required.

1.2.2.a

1.2.2.b The artist or his successors in title transfer to the gallery that represents them, free of charge, the rights of reproduction and representation for campaigns to promote the work, as well as to create documents and archives. If the artist has transferred his rights to a royalties collecting and distribution society, he makes sure that he has the society's agreement to this.

## 1.2.3 Produces

1.2.3.a The artist produces his works, providing the resources needed to do so. In certain cases, if the artist needs help with production, he first contacts the gallery which may offer technical or logistical support or specific financing.

1.2.3.b In this case, a specific contract may stipulate the terms and conditions of production between the artist and the gallery, as well as with any third parties.

1.2.3.c The involvement of the gallery in production of the work must be indicated during its display or use of its image.

## 1.2.4 Makes to order

1.2.4.a When a work of art is ordered and regardless of the commissioning party, the artist and commissioning party must involve the gallery in the project from the start of the process.

1.2.4.b If the artist is represented by a French gallery, it is customary to contact that gallery first.

## 1.2.5 Exhibits

1.2.5.a The artist must provide all the elements required to exhibit his work.

1.2.5.b For certain works, instructions or an installation protocol must be provided.

## Sells

1.2.6 Artists who grant a mandate to a gallery undertake not to sell directly, and therefore to inform the gallery of any purchase procedures by both private and institutional players. Consequently the sales mandate includes not only works consigned to the gallery, but also those in the workshop.

# The works 1.3

The artist remains the owner of the works stored until they are sold by the gallery.

## Consignment receipt – Sales mandate

1.3.1.a When a gallery accepts a work on consignment, it is preferable that a document should be drawn up when the work is entrusted to it. The document describes the work so that it can be identified: author, title, date of creation, size, techniques used, single work or number of copies (in this case, number of the consigned copy), state of conservation and other distinctive features.

1.3.1.b It also specifies the financial terms and conditions regarding sale of the work: the sales price that the artist and gallery have agreed upon, the sharing out of the proceeds from the sale, the potentially considered negotiations, information regarding VAT and the time limits for payment.

1.3.1.c The same document may concern the consignment of several works, in the form of a list repeating the same information. The document constitutes a contractual commitment, and

must be dated and signed by the artist or his successors in title and the gallery, with one copy for each party.

1.3.1.d The documents concerning the consignment of works must be updated regularly. It is recommended to review them once a year, or during an exhibition, for example.

1.3.1.e The works must be returned to the artist at the time indicated in the agreement or earlier by mutual consent.

## 1.3.2 Preservation

1.3.2.a The gallery must insure the works that are entrusted to it and make sure they are preserved. For that purpose it informs the artist of the means and conditions of preservation it can provide.

1.3.2.b If a work needs to be restored, this is carried out with the agreement of the artist or his successors in title.

## 1.3.3 Movement of works

1.3.3.a The gallery ensures the traceability of the works consigned, thanks to a register or a file of incoming and outgoing works, and keeps the artists informed of this. The gallery is responsible for locating them when they are lent to third parties, for example to public or private institutions. This is also the case during procedures regarding management of the works, and in particular if movement of the works involves customs formalities.

1.3.3.b The gallery organises the movement of works and has a responsible attitude regarding their handling, packaging, transport and storage, in order to protect the integrity of the work.

1.3.3.c Works exhibited outside the gallery are treated as loans. These movements of the works are recorded on a loan sheet

managed by the gallery. It is drawn up in association with the borrower and indicates the name and place of the exhibition, its length, the insurance conditions, transport conditions and the condition of the work on departure and arrival.

If the request to borrow works is sent directly to the artist, the artist informs the gallery and entrusts the gallery with the management of the loan. 1.3.3.d

## Documentation regarding works 1.3.4

The gallery owner is advised to keep archives regarding the work of the artist it represents and to enrich them with all types of documentation: texts, images or relevant information concerning the artist's work. 1.3.4.a

These archives remain entirely the property of the gallery, since they are the result of its work. It alone can allow them to be consulted or possibly to be used, under the conditions that it specifies, in accordance with the artists' copyright. 1.3.4.b

The gallery must be mentioned in all uses of these archives. 1.3.4.c

## Certificates 1.3.5

At the artist's request, or if required due to the nature of the work, the work must be accompanied by a certificate. 1.3.5.a

The works are described and guaranteed according to current knowledge of the market. The document indicates what the work comprises as clearly as possible and, where appropriate, specifies the number of components. It must include at least one photograph of the work and include such additional descriptions as the quality of the image alone cannot provide. 1.3.5.b

The certificate is a single, original document which accompa- 1.3.5.c

nies the work and which cannot on any account be reproduced.

1.3.5.d

The gallery owner is however advised to keep a duplicate of the certificate for the purposes of traceability of the work once it has been sold.

1.3.6

## Payment of the artist

1.3.6.a

If the artist grants a mandate to the gallery to sell his works, the gallery acts as an intermediary in the sale. The gallery and the artist (or successors in title) agree on the financial terms and conditions. They are free to agree on the sharing out of the proceeds from the sale. There are three recurrent possibilities:

1.3.6.b

— If there are no production costs, the sharing out of the proceeds from the sale must be determined with the artist or successors in title.

1.3.6.c

— If production costs are incurred by the artist, the gallery or a third person, the proceeds from the sale are shared out after deducting the agreed production costs, which are repaid to those who incurred them.

1.3.6.d

— If the work is made to a specific public or private order, a specific financial agreement is made between the artist, the gallery and the commissioning party.

1.3.7

## Statement of accounts

1.3.7.a

Works are generally sold in several stages: reservation, conclusion of the sale, billing and payment. This process takes a certain amount of time, and therefore the artist must be kept informed. The gallery owner undertakes to pay the artist on actual receipt of payment for the work.

## Termination of the collaboration

1.3.8

If one or other of the parties wishes to end the collaboration, a notice period is provided for; it should be reasonably long, in proportion to the length of the collaboration between the gallery owner and the artist, and may be defined by mutual agreement.

1.3.8.a

Nevertheless, termination cannot prevent the finalisation of sales negotiations already under way, in accordance with the agreed notice period.

1.3.8.b

The artist or his successors in title must do everything required to recover, as soon as possible once the collaboration is ended, the works stored by the gallery, in compliance with the agreed notice period.

1.3.8.c

In the specific case where the production of the work was financed by the gallery, the gallery is given first option to purchase the work. The gallery can also waive this option, subject to repayment of the production costs.

1.3.8.d

In the event of breach of the contract, the expenses incurred due to the breach are payable by the party that broke the mandate.

1.3.8.e



**RELATIONS  
WITH  
BUYERS**

<b>Advice</b> —————	<b>2.1</b>
The gallery owner advises his customers and helps them to make the right choice. He gives them the benefit of his expertise and passes on the information at his disposal.	2.1.1
The gallery owner shows the greatest discretion and undertakes to respect the confidentiality of the discussions and the personal data he collects in order to protect the privacy of his clients, in particular in the event of the sale, purchase or loan of a work carried out through the gallery.	2.1.2
<b>Works sold</b> —————	<b>2.2</b>
The gallery owners must obtain all of the guarantees required regarding the authenticity of the works he sells. For second market works, he must also attempt to determine their origin.	2.2.1
Members of the Professional committee of art galleries undertake to sell works in compliance with French regulations regarding original works of art. They thereby offer their clients a guarantee and transparency.	2.2.2
<b>Display of prices</b> —————	<b>2.3</b>
Prices are displayed in art galleries according to the recommendations of the French authorities: by “affixing a discreet label on the items exhibited to the public or consulting a price list”.	
<b>Payment</b> —————	<b>2.4</b>
In principle, works of art are paid for on the spot. However it is possible to provide for deposits or down payments.	2.4.1

2.4.2 An invoice is issued to conclude the sale of a work of art, on which it may be necessary to include a retention of title clause, until payment of the price in full.

2.4.3 Cash payment is only possible within the maximum limit provided for by the law.

2.4.4 For purchases carried out by a company, it is customary to identify a representative who is a physical person (first name, surname, capacity) who carried out the transaction on behalf of the company, which is a legal entity, and to whom the invoice is sent.

2.4.5 The invoice must specify the terms of payment, i.e. the due date for payment and the late payment penalties applicable<sup>1</sup>.

## 2.5 Certificates ---

### 2.5.1 Invoices

2.5.1.a The gallery must issue an invoice describing the work sold: name of the artist, title of the work, year in which it was created, techniques, size, single item or numbering if necessary.

2.5.1.b The invoice provides a guarantee to the buyer regarding the information it includes.

2.5.1.c Members of the Professional committee of art galleries undertake to describe the works of art in accordance with normal practice in the profession and the terminology of French Decree n° 81-255 of 3 March 1981.

### Certificate of authenticity

2.5.2

On principle, the certificate is unique and must accompany the work to which it relates.

2.5.2.a

If a gallery has a certificate of authenticity for a work that it is selling, it must give it to the buyer together with the work.

2.5.2.b

### Origin

2.5.3

The gallery owner can give the holder of a work the information contained in its archives, for example concerning the origin, but also the biography and bibliography of the work sold. Research may result in costs for the person requesting the information. Information making it possible to identify a work is provided while respecting trade secrets and privacy.

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<sup>1</sup> Like the interest rate and the lump-sum compensation for recovery costs set by decree, these statements are compulsory for professionals and recommended for invoices to private individuals.



**RELATIONS  
WITH  
SELLERS**

## Purchases from private individuals 3.1

Members of the Professional committee of art galleries must be vigilant regarding the origin of the works that they acquire or accept on consignment. To do so, they must obtain all of the customary guarantees. 3.1.1

Purchases from private individuals, owners or representatives must be entered in the gallery's police register. 3.1.2

## Consignments 3.2

A work of art may be consigned to a gallery for valuation, exhibition or sale. A gallery owner who accepts one must draw up a consignment note indicating the nature of the consignment, the work consigned, its duration and the insurance value. In certain cases the additional insurance cost may be payable by the person who entrusted the work to the gallery owner. 3.2.1

Consignments of works for valuation, exhibition or sale<sup>2</sup>, carried out by private individuals, owners or representatives must be entered in the gallery's police register. 3.2.2

## Sales mandate 3.3

If a person other than the artist grants a mandate to the gallery to sell a work of art, a document is drawn up. Sales mandates are granted for a limited period of time, and indicate the nature of the work, its price, and if necessary the amount of commission, after deducting VAT and any resale right, both of which are payable by the seller but collected and transferred by the gallery<sup>3</sup>. 3.3.1

If it holds a mandate, the gallery makes sure that it has the owner's agreement before carrying out a sale, if the transaction is likely to be carried out under different conditions from those provided for by the parties. 3.3.2

<sup>2</sup> Articles 321-7 and R321-3 to R321-7 of the French penal code.

<sup>3</sup> Capital gains tax for private individuals resident in France for tax purposes - Article 150VI of the French General Tax Code (CGI). The resale right is payable by the seller when a work of art is resold.

# 4

## RELATIONS BETWEEN CONFREERES

## **Work sold to a confrere** \_\_\_\_\_ 4.1

A gallery owner who sells a work of art to a confrere undertakes to provide all of the information required to sell the work, while respecting trade secrets and privacy. 4.1.1

In addition to the standard authentication details included on the invoice, information is provided concerning previous transactions, particularly those carried out by public sale. 4.1.2

## **Joint purchase** \_\_\_\_\_ 4.2

A joint purchase by professionals requires a retrocession invoice. The resale price of the work of art is decided by mutual agreement. 4.2.1

In the event of additional costs (restoration, transport etc.) the costs must be divided in proportion to the share of each person or by agreement, and are recorded in an invoice. No significant or unusual expenses may be incurred without prior agreement between the parties. 4.2.2

If one of the gallery owners does not agree to the sales price, his share may be bought by another participant in the purchase. 4.2.3

The Professional committee of art galleries recommends that the conditions of joint purchase should be recorded in writing. 4.2.4

## **Work consigned for exhibition and possible sale** \_\_\_\_\_ 4.3

If a gallery owner entrusts a work of art to a confrere, the conditions must be specified in a contract. This contract must stipulate the duration of the consignment, the sales price and the commission due to the borrower. 4.3.1

4.3.2 It is customary for the borrower to pay all transport and insurance costs for the work.

#### 4.4 Works on loan

If a gallery owner wishes to hold an exhibition with an artist who is widely-known to be attached to another gallery, he must inform that gallery and obtain its agreement.

#### 4.5 Seller's responsibility for works entrusted

4.5.1 A gallery owner who sells a work entrusted by a confrere is the only responsible interlocutor with regard to the client.

4.5.2 In the event of a dispute between galleries, the galleries undertake to seek an amicable solution to the dispute rapidly and in good faith, based on their own commitment.

#### 4.6 Sale through an intermediary

4.6.1 When an intermediary is involved in a transaction between a private individual and a dealer, the conditions of the transaction must be set and the commission must be negotiated before the sale is concluded.

4.6.2 The intermediary must provide an invoice including the information making it possible to identify the transaction and the final customer.

#### 4.7 Departure of an artist

If an artist leaves a gallery to join another one, the new gallery informs the previous one. Compensation may be paid between confreres.

## Arbitration 4.8

In the event of a dispute with a gallery, any party to the dispute (artist, successor in title, buyer, seller, gallery etc.) may call for arbitration to find an amicable solution rapidly. The President of the Professional committee of art galleries shall appoint an arbitrator if it considers action by the committee to be appropriate.

This code of ethics was published by the Professional committee of art galleries presided by Georges-Philippe Vallois.

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This code of ethics is available in French and English. Only the French language version is binding. The English version is provided for information only.

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