

Professional Development

DON'T FEAR THE CONTRACT

by Robert C. Cumbow *[excerpted from the Artist Trust Journal, Spring 2000]*

Artists tend not to like contracts. They're creative people, flexible, open to the impulses of the imagination, and they have little patience with the "legalese" and the constrictions of documented agreements.

Chances are when you read the word "contract," you picture 17 pages of fine print with numbered paragraphs and long complex sentences whose subject and verb are as hard to find as product support on a Saturday afternoon. But a contract doesn't have to be that way. In fact, a contract doesn't have to be written at all.

The term "contract" means simply an agreement that is enforceable by law. The law won't enforce a simple promise, or an agreement that doesn't meet certain basic conditions. But an agreement that does meet certain conditions is a contract and is therefore enforceable.

What are those conditions? Basically, a contract must reflect a clear intent to enter into a binding agreement, and a meeting of the minds, the parties with respect to the major terms of the agreement (such as what each party is expected to do, when, and how much money is to be paid).

An agreement that reflects those basic understandings, even if oral, is an enforceable contract. Of course, even though many oral agreements may be enforceable, there is at least one good reason always to get it in writing: a written, signed contract provides a clear record of what the parties have agreed to. Without such a record, the terms of the contract will often be one party's word against the other's.

In this regard, it's important to think of a contract not as the other party's way of taking advantage of you, but as your way of protecting yourself in the event of a later dispute.

Even a written contract doesn't have to be burdensomely complex. The reason many arts contracts—particularly those that come from publishers, record labels, or other large media organizations—are so huge is that such companies use "boilerplate" contracts design to cover every conceivable circumstance. Many of the terms of these contracts are negotiable, and can often be deleted as unreasonable or inapplicable to the current situation.

Increasingly, many people and organizations are employing user-friendly contract forms such as simple letter agreements or two- to three-page statements of deliverables and compensation schedules. Even if your agreement is an oral one, it's a good idea to memorialize it in the form of a friendly letter to the other party, setting down in writing your exact understanding of what has been agreed to.

The actual contents of a contract will vary greatly, depending on the nature of the agreement. A book publishing agreement, a record label agreement, and a commission for a public artwork, for example, will all contain very different kinds of terms and clauses because of the specific issues of law related to each of those businesses. Not all of these lend themselves to "short form" or letter agreements.

No matter how simple or complex an agreement is, however, there is no substitute for having it looked over by a lawyer, who can not only explain what's there but also spot a problem that might arise because of something that isn't there.

Having a lawyer look over your contract need not cost an arm and a leg. Many lawyers—especially those in solo practice or small firms—charge very affordable rates; and many others are willing to support artists by offering their work on a discounted or even pro bono basis.

Bottom line: Get it in writing, and don't sign it till you're sure you're protected.

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Washington Lawyers for the Arts and Artist Trust host the Arts Legal Clinic, every 2nd and 4th Monday of each month, where you can meet with an experienced attorney and review your legal questions. If you have questions about a contract, or about other art legal issues, please call WLA at 206/328-7053 to register for the clinic.