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code of practice

for artists and dealers in Aotearoa/New Zealand



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code of practice

for artists and dealers in Aotearoa/New Zealand





The *Code of Practice for Artists and Dealers in Aotearoa/New Zealand* was commissioned by Artists Alliance and researched and written by Karl Chitham.

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Disclaimer

The *Code of Practice* is intended as only a general guideline for artists and dealers. We have made every effort to ensure that the information we have provided is correct. However, we recommend that artists and dealers consult the appropriate professionals with regards to specific accounting and legal issues.

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ASB Community Trust
Te Kaitiaki Pūtea o Tāmaki o Tūi Tokereu
te kaitiaki ASB

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Artists Alliance is a not for profit membership-based organisation established in 1991 to represent and advance the professional interests of the visual artists of Aotearoa/New Zealand.

Artists Alliance sees itself as having a unique role, which is:

- to be the membership organisation of choice for visual artists
- to be the advocate for the visual arts sector in the wider arts community
- to have strategic partnerships with other key organisations, both nationally and internationally, for the benefit of members, constituents and the wider arts community
- to provide a comprehensive set of services which are specific to the visual arts sector.

In 2001 Artists Alliance joined the group of arts organisations receiving annual funding from Creative New Zealand. In advising of this funding Creative New Zealand said that the offer of funding reflected the Arts Board's view 'that Artists Alliance plays a nationally significant role in strengthening the voice and capabilities of the individual visual artist in New Zealand.'

introduction

This document is intended to be a guide for artists and dealers in establishing a best practice 'Agreement of representation'. It has been based on examples from international models and adapted to the current practice used in Aotearoa/New Zealand.

It is accepted that this model will not be adopted in full by all commercial art dealers. However, many of the points and issues discussed will be applicable in most situations relevant to a dealer/artist relationship.

This document is also intended to act as a professional development tool to assist in building consistent practice across the commercial gallery sector in Aotearoa/New Zealand.

This document is not expected to be solely for the use of commercial gallery operators. It can also be used as a guide for artists to assess and refine the agreements of representation they have with a dealer.

Where possible contact information and practical examples have been included.

reference checklist

Copyright

Copyright

Basic aspects of copyright related to the arts and in particular the visual arts. This section covers issues of the ownership, protection, and registering of copyright.

Reproduction licensing

Issues related to the reproduction of artist's work by a dealer, gallery or other parties.

Contracts

Agreement of representation

Issues to consider when entering an agreement of representation including territories of representation, exclusivity, duration of relationship, duty of care and display and moral rights.

Services to the artist

As part of an agreement of representation an artist should expect a dealer to provide a range of services including documentation, promotion and sales.

Termination of contracts

A range of possible scenarios related to the termination of an agreement of representation.

Approaches by prospective artists

A best practice example for dealers being approached by artists wanting to secure an agreement of representation.

Sample contract

An example of an agreement of representation.

Artist's obligations

Approaching a dealer

A list of issues related to approaching a dealer for advice and/or possible representative agreements.

Other obligations

Other issues artists should consider in relation to contractual agreements with dealers.

Exhibitions

Exhibition arrangements and costs

Issues related to exhibitions, including; freight, food and beverages, selection and installation, documentation, and dates and times.

Media and promotion

The promotion of an artist or exhibition, and other media related issues.

Press release

An example of a media press release for a visual arts exhibition.

Artwork sales and management

Consignment receipts

A list of works supplied to a dealer upon delivery to a commercial gallery for sale.

Gallery commission

A description and examples of commission rates and percentages on the retail price of artworks sold through a gallery.

Annual stock take

This includes issues related to the stock take of works in the gallery's care.

Sales and credit

All aspects related to the sale and credit of work through the gallery, including; deposits, instalments, credit and statements of sales.

Pricing

A dealer and artist setting the retail price of artworks.

Insurance

Some of the issues related to insurance, including policies; notification and damage of works.

GST

A list of examples related to GST and the sale of artworks. Some issues covered include; commission rates, registration and the calculation of percentages.

Discounts

Issues to consider in relation to the discounting of artworks.

Exterior exhibition and funding

Commissions

Issues for artworks commissioned by parties outside of an agreement of representation. This includes public and private commissions.

Prizes/awards

Things to consider in relation to entering competitions and awards, including; commission rates, credits and sales.

Charity auctions and fundraising events

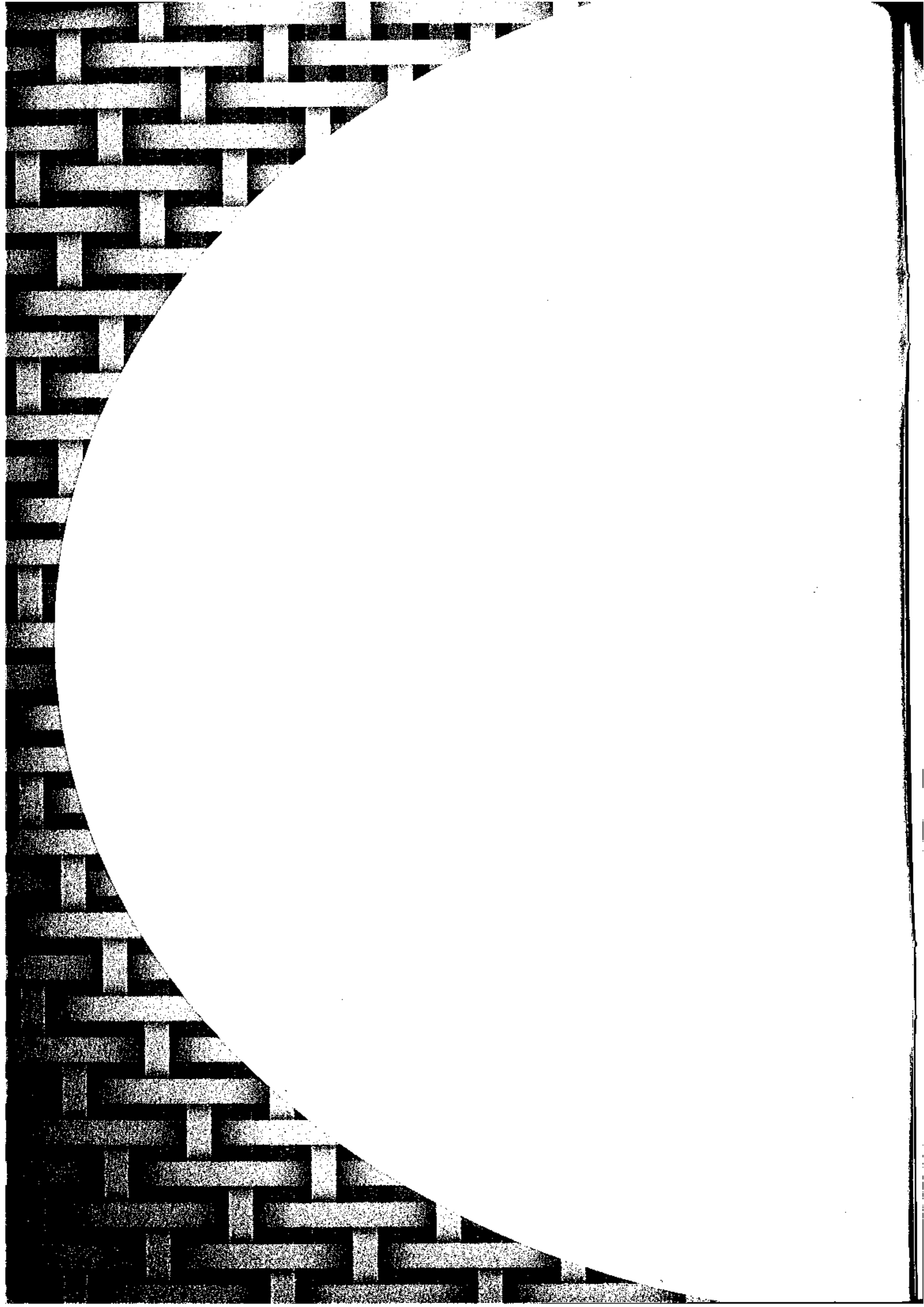
Some issues related to an artist providing work for a charity or fundraising event.

Exterior funding

Alternative funding options available including national and regional agencies and charitable trusts.

Public collections

A brief description of some issues related to supplying works to public institutions including donating and lending works to public collections.



copyright

What is copyright?

Copyright is part of the law of intellectual property. Copyright is a bundle of rights granted by statute, that is an Act of Parliament. The most important right is the right to copy. Copying is widely defined and includes taking parts of somebody else's work.

- Copyright is automatic under the Copyright Act 1994. There are no formal registration requirements.
- Copyright on an artwork is for the lifetime of the author (artist) plus 50 years following their death.
- There is no requirement for aesthetic or artistic worth. Engineering design drawings are protected just like works of art.
- Copyright is a property right and therefore capable of being assigned and licensed.
- Copyright provides a right of derivation as opposed to a right against independent creation. That is, you can take the idea as long as you don't copy the way it is expressed. Copyright protects the form in which an idea is expressed.
- It is important to distinguish between property rights in an object and property rights in the form of copyright in the object.
- Copyright legislation balances owners' rights against users' interests.
- Contracts are important for deciding who owns the copyright or who can use it and how.

How does copyright arise?

Copyright in a work arises when the creator ('the author') creates an original work. The meaning of original in the context of copyright is critical. It doesn't mean that the work is completely novel or new. To be original, the form of the work must not be

copied. If a substantial part of another work is included in the creation, that part is not original and not protected by copyright. And apart from being original, the work must be fixed or recorded. But not necessarily in writing. A recording in the form of an audio or audio visual recording will suffice, as would a computer record.

What does copyright protect?

Copyright protects the form of the work – in the case of artistic works, this is the appearance of the work. It does not protect the creative ideas behind the work.

How does copyright work?

Copyright cuts both ways: If you are using/copying works still covered by copyright without authority then you may face legal sanctions.

- If someone is using your works, then you will want to stop them.
- Copyright is a right to stop others doing whatever it is your right to do. So, another person may not copy your works. This follows from your exclusive right to use it yourself. But copyright does not give you a right to copy other works.

How does the court determine whether there has been copying?

There are three principles: (i) is the work objectively similar to the other work? (ii) is there a causal connection, i.e. is one work derived from the other? (iii) has a substantial part of the other work been taken, substantiality is determined on quality not quantity? There is no percentage measure e.g. it's not ok to take just 5%.

Who owns the copyright in a work?

Unless contracted to the contrary, the author is the first owner of copyright. Copyright in works created by employees belongs to the employer. Copyright in many commissioned works belongs to the commissioner.

Why is ownership of copyright important?

The owner of copyright has the right to use the work as he or she wishes. He or she can deal with it as they would any other property, can sell the rights absolutely or may require that the copyright revert under certain conditions.

If a person purchases an artistic work does he or she purchase the copyright at the same time?

Ownership of copyright in a work is not the same as ownership of the work itself. The distinction is easily seen in respect of paintings. An artist may dispose of a painting but he or she still owns the copyright, unless he or she has also relinquished copyright. Indeed, he or she could sell the painting to one person and the copyright to another.

Do you have to register your work?

Copyright arises automatically to the extent that there is no registration system for copyright works. You don't have to do anything. You don't have to put © on your work – that is just there as a reminder to other people but it has no legal significance. Of course that means that there's no public registration system you can check. So, if you are considering copying something, maybe a photo for the cover of a programme, it's better to assume that it's covered by copyright than to find to your sorrow that the work is protected.

Reproduction licensing

First sales by a dealer or gallery

In the case of a first sale, some artists choose to have a written agreement with their primary or signature gallery, or with the gallery or dealer facilitating the first sale, which permits the reproduction of their work for promotional purposes only. Such agreements are not compulsory, but are often entered into, in recognition of the fact that the first sale is of direct financial benefit to the artist, and any related reproductions support the first sale.

For the protection of all parties, any contract between the artist and their dealer or gallery should be in writing, be signed by both parties, and should outline circumstances in which reproductions can be made free of the payment of copyright royalties. (e.g. Brochures advertising the first sale of the work only, internet reproductions of the work to promote the first sale posted online until the work is sold, email reproductions of the work sent to prospective buyers until such time as the initial sale is complete.)

Dealers and galleries should be aware that written permission to reproduce an artist's work to promote first sale, does not constitute permission to interfere with the integrity of the work in reproduction. Any cropping, altering or over-printing of the work in promotional material should be approved by the artist in writing.

Secondary sales of work by a dealer or gallery

If full Viscopy members, who are exclusively represented for all copyright, have works that are to be resold by auction or otherwise, galleries and dealers should contact Viscopy prior to any reproduction, to discuss licensing costs and arrangements: licensing@viscopy.com. Otherwise the artist will not benefit from the secondary sale of their work.

- It is recommended that all short-term agreements be recorded in writing in order to reduce potential issues of misunderstanding.

Duty of care

- It is expected that the gallery will be responsible in full for all artwork in their possession. This includes handling, storing, displaying and packing the work.
- It is also expected that the gallery will provide a secure environment, including; fire and burglary protection, environmental control where applicable, and insurance arrangements as agreed.
- If work is damaged while in the care of the gallery then it is expected that the artist will be immediately informed and consulted regarding further action. If repair is required then the artist as owner of the work has complete control over the decisions made. The cost of repairs should be covered by the gallery. If a work is damaged beyond repair then the gallery should pay the artist the retail value of the work less the gallery's commission. Ownership of the artwork is thereby transferred to the gallery and/or insurer. If a dealer does not retain liability then this must be stated in writing from the outset of representation.

Territory of representation

- The gallery and the artist should discuss and agree the geographical boundaries of the relationship. This applies especially to artists represented by various dealers throughout the country.
- The gallery should not exceed its usual sphere of representation unless this has been fully considered by both parties.
- International representation and issues of exclusivity should be considered in this discussion to avoid conflict with other territorial representatives.

Frequency of exhibitions

- The gallery and the artist should agree on the frequency of exhibitions prior to the beginning of representation. Usually an artist with full representation would have an exhibition once every two years. However an artist could expect to be in at least one group exhibition per year, if possible, at the discretion of the gallery.

Display and moral rights

- It is an expectation that a gallery will not impose on, or compromise, an artist's integrity or moral rights.
- The dealer should ensure that the artist's work is shown as it was intended. This includes not altering the work in any way, or displaying the work in a manner that alters its initial intentions.
- The artist must be credited correctly and clearly.
- If the artist is of a particular cultural background that requires protocols or display specifications then a dealer should endeavour to respect these as fully as possible. The artist needs to state requirements from the outset in order for the dealer to understand how this may impact on their relationship.

Services to the artist

As a requirement of a full agreement of representation, a gallery consents to providing ongoing services to the artist in return for the commission on sales of the artist's work. These services may include but are not restricted to the following:

- Providing an opportunity for exhibition (both solo and group shows).
- Producing in-house portfolios to publicise the artist.
- Archive and CV maintenance
- Maintaining visual material for promotional purposes, including an ongoing media archive.
- Pursuing ongoing sales and exhibition opportunities outside the gallery. (This may include private and public sector commissions and international opportunities.)
- Cultivating collectors and corporate clients.
- Advocating on behalf of the artist to ensure legal and moral rights are not infringed.
- Recording of all works left in their care.

Termination of contracts

In the event of a contract between an artist and a dealer coming to an end it is important to consider some of the following issues:

- If a relationship is to be terminated then both parties must agree to the terms of the separation. This should include the terms of notice and any outstanding commitments made by either party. In extreme cases termination may occur without notice. This is not considered good practice as it limits both parties from achieving adequate resolutions.
- If a relationship has been terminated the dealer is still entitled to commission on any sales initiated prior to the relationship ending. It is not common practice to continue receiving commission on sales made following the termination as this suggests the agreement of representation is still current. On occasion a dealer may be involved in the sale of works by an artist they have represented in the past. This situation is rare and is usually a specific one-off occurrence.
- Mediation should be sought in the case of disputes over breaches of contract before legal action is commenced.
- In the event of an artist dying, it is expected that the dealer will continue any sales initiated prior to the artist's death and return all stock and any monies owed, to the artist's estate. In some cases the managers of the estate may request that a dealer continue to represent the artist. In this instance it is suggested that a comprehensive agreement be produced to ensure roles and services are clearly outlined.
- If a gallery goes out of business or a dealer is declared bankrupt then all works held by the gallery on consignment should be recoverable by the artist via the dealer or the receiver. The artist needs to apply in writing and submit a copy of the consignment receipt in order to verify ownership. The artist effectively becomes a creditor and must be added to list of creditors to be reimbursed for payments not received prior to receivership. If a gallery has been operating a separate account as a trust in order to safeguard artist's earnings on sales it may be possible to avoid becoming a creditor.

Approaches by prospective artists

A dealer needs to keep in mind that all interactions should be conducted in a professional manner. When a dealer is approached by an artist for representation it is important to keep in mind the following points:

- It is expected that an artist will take the time to visit a gallery before approaching the dealer for representation. This is an opportunity for the dealer to establish with the artist the type of work and artists they currently represent in order to save either party investing unnecessary time and resources.
- A dealer should always return all calls from prospective artists. This is sound business practice and ensures that a dealer's reputation remains one of professionalism and reliability.
- If a dealer is not prepared to take on any new artists when approached, then it is necessary to communicate this from the outset.
- If a dealer has agreed to meet with an artist, then it is expected that both parties will be present and prepared at the correct time and place as per the initial communication. The dealer needs to establish immediately with the artist what the process and obligations of representation encompass.
- When discussing the artist's work it is important for the dealer to be honest and encouraging. If the work is not appropriate then the dealer may be able to offer some advice as to other possible galleries and or contacts they think may be interested. It is not expected that the dealer take on the role of mentor at an initial meeting. However, this may develop as a dealer becomes interested in an artist's work in the future and this is the first step to developing that relationship.
- If the dealer decides to offer the artist either full representation or a probational period of representation then it is important that the artist understands fully what this entails. Common practice suggests that this can be either a written or a verbal contract of agreement. However, it is recommended that a written contract and description of the terms and conditions be considered in order to limit the likelihood of misunderstandings.
- If the agreement is for inclusion in a one-off group show in order for a dealer to gauge interest in an artist's work, this should be made clear to the artist. There should be no confusion as to the nature of the relationship.

THE ARTIST / GALLERY CONTRACT (sample)

This is an agreement between:

(The artist)

and

(The gallery)

1. CV

As soon as possible after the confirmation of an exhibition booking, the artist will provide a curriculum vitae for publicity purposes.

2. Delivery, hanging, pricing of works

- a. Works will be delivered to the gallery for hanging on the date agreed with the directors.
- b. A 'schedule of works' will be made when the art works are delivered to the gallery.
- c. Final decisions about the acceptance, choice and hanging of works will be agreed with the directors and officials of the gallery in consultation with the artist.
- d. The price of works will be determined by mutual consent, will include gallery commission and GST as applicable and will be noted on the 'schedule of works'. Adjustment to the price of works should not be made unless the full consent of the artist has been provided.

3. Conditions of sale

- a. All works exhibited at the gallery must be for sale unless specific arrangements to the contrary are made with the directors.
- b. All works exhibited at the gallery remain the property of the artist until the completion of a sale, including works on hire or on appro.
- c. All works are received for sale by the gallery on commission. The agreed commission is negotiated by both parties. If not already included, GST is added.
- d. Works remaining unsold will be collected as arranged with the directors.

4. Exhibition costs

- a. Costs are negotiable, but will normally include: invitations, rental, postage, wine, documentation, publicity, advertising.
- b. The artist will only be charged costs by agreement.
- c. The artist will pay for freight and associated insurances, unless other arrangements are agreed in writing. If a work is sold the costs of freighting it to the purchaser will be met by the gallery.

5. Payments to exhibitor

- a. At the completion of the exhibition the gallery will provide the artist with a written financial statement covering sales and expenses.

- b. On outright sales, the gallery shall pay the artist the balance of the sale price after its commission and the agreed costs, within 30 days of purchaser's payment to the gallery.
- c. The gallery may take instalment or credit sales. Timing of payments for these sales will be negotiated between the gallery and the artist. It is agreed that any default by the purchaser shall be borne solely by the dealer.

6. Liability for loss or damage

The gallery is responsible for loss or damage to any consigned artwork. In the event of loss, theft or damage that cannot be restored, the artist shall receive the same amount as if the work had been sold at the retail price. If restoration is undertaken, the artist shall have:

- a. the right to repair or restore the work for a proper fee, or
- b. the power of veto over the choice of the restorer, which power is not to be exercised unreasonably.

7. Cancellation of the exhibition

May be made by either party providing at least 60 days written notice to the other.

8. Works in stock

After an exhibition, unsold works may be retained as stock for a period of no less than three (3) months unless prior arrangements have been made between the artist and gallery, for works to be freed for exhibition elsewhere during that period.

9. Copyright

The copyright in each work will remain the property of the artist, and the gallery will inform purchasers that the artist is the owner of copyright in the work.

10. Disputing the agreement

- a. The parties agree to work towards an amicable resolution, and to be guided in their interpretations of this agreement by fairness and common sense and,
- b. If such a resolution cannot be reached in direct negotiation, then parties agree to appoint a mutually acceptable arbiter, whose judgement, both on the point(s) of difficulty in the interpretation of this agreement and on the allocation of arbitration costs (if any), will like-wise be guided by fairness and common sense, and will be accepted as final by both parties.

Signed for the gallery:

Name _____

Signature _____

Date _____

Signed for the artist:

Name _____

Signature _____

Date _____

artist's obligations

The artist needs to be made aware of the following responsibilities:

- The artist should not compromise their contractual agreement by attempting to establish independent business relationships with parties outside the pre-existing arrangement.
- The artist should respect the dealer/artist relationship by not disclosing client lists or information of this kind to other parties.
- Where a dealer has established an international contact or included work in an art-fair the artist should acknowledge this by following up any subsequent discussions/negotiations when required in a professional manner.
- Where a dealer has assisted in establishing access to international markets, the artist should acknowledge this through a percentage fee of any sales generated in relation to contractual obligations.
- The artist should acknowledge the support and goodwill of their dealer through credits when exhibiting in other venues (except when the exhibition is in another region where the artist has other contractual agreements with other galleries).
- Where the artist has been invited to exhibit work in an exhibition outside their dealer gallery, it is the artist's responsibility to inform and discuss this with the dealer.
- The artist should supply a dealer with comprehensive biographical and contact information to allow the dealer to represent the artist to their utmost.
- The artist needs to fulfil the agreed exhibition obligations:
 - a) Providing the agreed upon quantity and quality of work by the agreed upon date prior to the exhibition.
 - b) Supplying a list of invitees for opening events, including previews and industry nights.

- c) Collecting the work following the exhibition (unless other arrangements have been made).
- d) The artist should respect the health and safety responsibilities of the gallery.
- e) The artist should attend all exhibition previews where possible.

Approaching a dealer

Before an artist approaches a dealer to consider them for representation they need to consider some of the following:

- Who their target audience is prior to considering galleries for representation.
- A wide variety of galleries in order to gauge whether the gallery exhibits:
 - a) a relevant range of work in style and media.
 - b) to the required target audience.
 - c) work by artists of a similar calibre.
 - d) the work in a professional manner.
 - e) a suitable space and décor.
- Impressions of the staff and their interaction with visitors to the gallery.
- When making initial contact regarding representation it is expected that the artist will make an appointment and be professional and informed.
- When attending an initial meeting with a prospective dealer, it is expected that the artist will have examples of work and past exhibition history, and be prepared to take advice.
- Prospective dealers are not obligated to offer representation at an initial meeting. It is expected that an artist would be courteous and professional should this occur.
- If a dealer offers an artist a probational exhibition or limited representation, it is the artist's obligation to clarify and understand the parameters of the agreement. (Refer to the section on 'Contracts' – see page 12).

exhibitions

Exhibition arrangements and costs

Arrangements for exhibitions, including opening events, are the responsibility of the gallery and representative dealer (for 'Artist's obligations' – see page 19). A list of the relevant issues should be discussed fully with the artist prior to the exhibition preview and needs to include the following:

Freight

The work needs to be transported to the gallery. This is usually the responsibility of the artist. However, a dealer may feel that the nature or location of the work may warrant the use of a professional carrier. The costs and organisation should be discussed thoroughly prior to a hanging date. The gallery will usually pay for the return of the work following the exhibition, however this may not be the case depending on the contractual agreement.

Food and beverages

Although this has become an accepted addition to the exhibition preview, it is not compulsory. This needs to be discussed in advance with the artist in order to establish who is liable for the cost and organisation. Some galleries include this in the exhibition expenses as a given, so it is important that the artist is made aware of this.

Selection and installation

It is expected that the dealer would have made arrangements prior to the date of installation to view the artist's work and select the content of the exhibition through discussion with the artist.

- When installing the work, best practice suggests that the artist will be present in order to limit any confusion or conflict regarding incorrect display. The dealer is responsible for providing the basic means by which to hang the works, unless the

work is of an unusual size, weight or media; in which case other arrangements should be made in conjunction with the artist. In some cases the gallery may employ professional installers to hang an exhibition. This needs to be made explicit to the artist as it can be costly and the gallery may want the artist to take full or partial financial responsibility.

- On the exhibition's completion it is the dealer's responsibility to ensure the exhibition space is returned to its original state, unless other arrangements have been made with the artist or other parties.

Documentation

It is expected that an exhibition will be documented by both the artist and the dealer. This acts as a visual reference of both the installation and the individual works. If only one party has documented the exhibition then it is through discussion and agreement that copies be made for the other party. The party that pays for the documentation therefore owns it and has all rights over it, unless other arrangements have been made. The documentation can be used for promotion and record keeping as per the contractual agreement (for further information refer to 'Media and promotion' – see page 23, and 'Reproduction licensing' – see page 11).

Framing

The framing of works is the responsibility of the artist unless arrangements have been made with the dealer. If a dealer insists on works being framed that were intended for display unframed then an agreement needs to be made as to which party will be financially liable. Commission may vary depending on whether works are framed or unframed. (Refer to the section on 'Gallery commission' – see page 25).

Dates and times

The dates for an exhibition need to be agreed on well in advance. In some cases these dates may change. The artist should be made aware of this well in advance in order to allow for rescheduling of other commitments. Opening hours of a gallery are usually standardised and the artist should already be familiar with this.

The time and dates of the preview also need to be discussed in advance in order to allow for invitations and promotion of the exhibition.

Media and promotion

Media and promotion should be mutually beneficial to both parties. It is important to consider all of the possibilities when considering a strategy:

- All promotional activities should be discussed and agreed upon with the artist prior to being undertaken. This may include creating a specific promotional strategy or utilising a pre-existing arrangement that a dealer may already have in place.
- It is expected that a dealer will make a reasonable effort to promote and publicise an exhibition. This may include press releases in local, regional and national papers; advertising in art and other related magazines; listings in free 'what's on' publications; television or radio coverage and invitations to preview events.
- If the gallery has a limited pre-existing publicity strategy, then this should be made explicit to the artist. However, some dealers may stipulate that only their publicity strategy may be employed. The artist needs to be aware of this and informed of the reasoning behind it.
- All media coverage, where possible, should be documented and brought to the artist's attention.
- All promotional material produced by the gallery or the artist should be documented and kept on file by the dealer. This information may also be used in gallery profiles on the artist.
- Agreements regarding invitations to previews and opening events can vary from gallery-to-gallery. Most dealers will have an event of this kind and will invite their client base and others via invitation in order to promote the exhibition. (for more information refer to the section on 'Exhibitions arrangements and costs' – page 21).
- The dealer should have a professional working relationship with the media they employ regularly. This includes providing all of the correct and relevant information relating to the exhibition and artist.

Press release

A dealer should make a reasonable effort to contact media regarding upcoming exhibitions. A press release is a good way to do this. However, in order for the most efficient response it is important to consider some of the following issues.

A press release should be:

- brief and concise and include only relevant information.
 - easy to read (consider things like font style, font size, and short paragraphs).
 - ready for immediate use, which should be made explicit.
 - headed by a catchy title which will create interest in the exhibition.
 - it needs to include the following information:
- | | |
|---|--|
| a) The name of the artist. | e) The opening hours of the gallery. |
| b) The name of the exhibition
(if applicable). | f) The name and location of the gallery. |
| c) The dates of the exhibition proper. | g) A brief description of the work. |
| d) The date and time of the preview
(if applicable). | h) Some brief background information
on the artist. |

SAMPLE PRESS RELEASE

**(relevant contact information including contact person)*

Media release for immediate use: **(relevant date)*

Cultural Revelations **(title of exhibition)*

An exhibition by Aroha Crucifix **(artists name)*

17 April – 1 May 2005 **(dates of the exhibition)*

Nga Toi Gallery **(gallery name, address, phone, fax and email)*

Open 10am till 5pm Tuesday to Saturday **(gallery hours)*

Preview: 16 April, 6 – 8pm **(preview date and time)*

Aroha Crucifix has created a body of paintings, acrylic on canvas, which explore the clash of the Catholic faith with traditional Maori beliefs. She has drawn on her whakapapa and colonial history to portray significant events from the far north.

**(what is the exhibition about?)*

Aroha Crucifix is of Maori and Italian heritage and is currently completing a Masters in Fine Arts through RMIT. She has been exhibiting extensively throughout New Zealand and Australia and has also held exhibitions in New York and Tokyo. Aroha has been exhibiting at Nga Toi Gallery for the last two years.

**(about the artist)*

Cultural Revelations is being held in conjunction with Maori New Year celebrations as part of the Matariki festival programme.

**(what the exhibition is part of, if applicable)*

artwork sales and management

Consignment receipts

Consignment receipts are an essential part of the dealer/artist relationship.

The following should be considered when discussions take place:

- A consignment receipt should be presented to the dealer when delivering works to the gallery.
- An identical copy should remain with the artist.
- Ideally both parties should sign the documents to ensure no misunderstandings can take place.
- A dealer should check that the work delivered corresponds with the consignment receipt and make any alterations to the receipt with the full knowledge of the artist.
- A consignment receipt should also outline the condition of all of the works listed.
- A dealer should validate a condition report upon the works arrival at the gallery.
- If works are delivered to a dealer without an attached consignment receipt, then it is expected that the dealer will prepare a list immediately upon taking possession of the works.
- The consignment receipts should also be referred to when conducting stock takes and upon the sale of any works.

Gallery commission

Commission is the equivalent of a dealer's payment for providing conditions and services of sale on behalf of an artist. It is an essential aspect of a representative agreement and needs to be considered in relation to all sales of an artist's work.

- A commission rate should be set prior to any form of representation taking place. The amount of commission will usually be standard across all artists being represented by the one dealer and would not be expected to exceed 40% excluding GST (refer to the section on GST – see page 30). However, this is best practice and may differ depending on the gallery.
- The rate of commission will usually be consistent across different types of transactions. This includes sales direct from the studio, prizes and awards, and other non-gallery projects.
- It is expected that any change to commission rates initiated by dealer or artist will be discussed and agreed to in full by both parties before adjustments occurs.
- If a situation arises which requires an artist to be a sole point of contact with a purchaser, it is expected the gallery will still receive full commission on the sale.
- In the case of multiple galleries or agencies being involved in the sale of an artist's work(s), the total rate of commission should remain the same and be divided between the managing parties.
- If an artist supplies work to an event or auction then it is expected that the gallery will still receive a commission on the sale price of the work. The dealer and the artist should agree on a reserve price prior to any event, which should ensure that both parties receive a satisfactory outcome. The gallery and the artist need to be informed as to any longstanding arrangements that might exist prior to representation. If a dealer agrees to forgo commission on a work in a fundraising event then the artist needs to respect that this effectively becomes a loss of earnings and an act of goodwill on the part of the dealer.
- In the event of an artist being commissioned to produce a specific artwork, the rate of commission by a dealer may be different. This is usually calculated in order to allow for variable costs that apply to discipline specific projects such as public sculpture, installation art and large scale painted works. It is recommended that the rate of commission should only apply to the artist's profit (e.g. the total commission less costs of production) and not the total value of the commission.

Annual stock take

A dealer must be fully aware of all stock held on consignment in their gallery. This is essential to:

- Notify insurance companies of up to date information regarding accurate cover as per policy arrangements.
 - Keep records of sales current.
 - Keep artists informed of sales and turnover.
 - Provide relevant information regarding trends and directions in the market via sales.
- Regular stock takes are recommended to reduce issues of payment and clearance.

Sales and credit

Sales should be conducted in a professional and organised way. This includes considering the following aspects:

- All information regarding sales should be documented in a legible organised manner, including terms and conditions of sale.
- Upon sale of a work, the artist should receive payment within a 30 day period following settlement by the purchaser, or by the 20th of the month. The artist should not need to contact the gallery in order to enquire after payment.
- The dealer may keep artists informed of any sales or potential sales, however, this is not a given and should only take place upon request or as part of the initial dealer/artist agreement.
- A dealer usually sets a standard minimum deposit for works. The amount varies from 10% – 25%. A deposit is necessary in order for a potential purchaser to hold a work on the understanding that full payment is to occur. A purchaser should not take possession of a work until full payment has been received by a dealer. A dealer should set a maximum period for works to be placed on hold. Exceptions may be made due to longstanding customer/dealer relationships, however, this must be communicated to the artist at the time of agreement. If the customer has paid a deposit and does not proceed with the sale, they may forfeit their deposit. The dealer should then deduct the commission amount based on the total deposit paid and pass on the remainder to the artist.
- It is usual practice in most galleries to accept payment by instalment. The dealer should set a standard payment amount including a deposit and a maximum time allocation for the entire transaction. Instalment payments should be made at regular intervals with commission paid on each instalment. It is expected that the

gallery will forward each payment (less commission) directly on receipt from the purchaser. A dealer may withhold payments until full purchase has been made to ensure no ownership transfer disputes. Artists and dealers will agree on the maximum period, which can apply to instalment purchases.

- A gallery should provide all represented artists with a comprehensive statement of sales at regular intervals (no more than 90 days apart). A statement should include a list of all sales including sale prices, commission deducted and expenses payable by the artist. A statement should also be accompanied by the payment of any amounts owing to the artist unless other arrangements have been made regarding this.
- It is not usual practice to extend credit to purchasers. However, if credit is offered to a customer by a dealer, then the risk becomes that of the dealer. An artist should be consulted by a dealer in advance of any such arrangement. If the purchaser defaults the agreement then the artist should receive full payment less the gallery commission.
- It is not usual practice to provide details of purchasers and is contrary to the Privacy Act. A gallery's mailing list is valuable intellectual property, protected by common law and usually covered in galleries' employment contracts. A gallery's mailing list not only takes years to build up but is expensive to maintain and enhance. A dealer would normally advise an artist of (and possible details) a sale to a public art gallery or institution.
- A dealer may wish to reserve work for valued customers. This is not the same as holding work and usually does not involve acquiring a deposit. It is the equivalent of first right of refusal on a work. It is not expected that a dealer will inform an artist every time this occurs. However, this needs to be discussed with an artist as part of the initial agreement of representation.
- It has become common practice to display red spots next to works, which have sold while still on exhibit. This indicates to the prospective purchaser that this work is no longer for sale. If a work has been put on hold, some dealers have adopted to display green spots. This practice is purely voluntary. There is no expectation for dealers to adopt either of these practices.
- It is recommended dealers adopt the practice of maintaining two gallery accounts. An account for the business of the gallery and a separate account to hold monies owed to artists. This practice safeguards the artists' earnings in the event of bankruptcy and business failure.

Pricing

The artist and the gallery should jointly agree upon the retail price of the artwork. The following aspects should be considered:

- The retail value should reflect the current standing of an artist as well as past sale prices.
- It is important to consider current trends in sales for particular disciplines and subject matter when pricing works. However, this should not be the sole consideration.
- The artist should respect the dealer's knowledge regarding pricing as a dealer is expected to be aware of how the market is placed at any one time.
- Prices should be set to encourage sales.

Insurance

It is expected that galleries carry one or more insurance policies to protect against damage etc. to the work in their care. The following should be considered in relation to agreements with represented artists:

- Policies should cover care, custody and control, both in the gallery environs and in transit.
- If a dealer has undertaken not to have insurance cover, then it is expected that the artist will be informed of this from the outset of any interactions involving the sale or display of works in a gallery.
- Any agreement should detail all aspects of insurance cover including value, liability and from what point this cover begins and ends (e.g. upon delivery to the gallery, until the work is collected either by the artist or the purchaser).
- The dealer should also communicate to the artist the process of notification should anything happen to the work within the gallery or in transit.
- If work is damaged or stolen while in the gallery's possession, then it is expected that the artist be paid for the agreed value of their work as per any agreement made. This should take place regardless of the level of cover the gallery has purchased, and the dealer may pay the artist prior to settlement of a claim.
- If the work is damaged in the possession of a purchaser and returned to the dealer, then the purchaser is liable for costs of repair or the value of the work. The artist is no longer the owner and therefore not liable.

Goods and services tax (GST)

Anyone who is a self-employed artist will understand the challenges they face when dealing with taxation.

While we can't be expected to cover all aspects here, we are looking at the confusing issue of selling artwork through a gallery or art dealer, in particular the commission you will be required to pay on these sales.

This scenario used is by no means the only one, but is the most likely situation you will face.

Firstly, selling through a gallery or art dealer, one can assume that they are going to be GST registered. The scenario illustrated, is with the commission of 40%

ART DEALER	Registered artist	Non-registered artist
Retail price of painting	1500 incl GST	1500 incl GST
Price from which dealer calculates commission	1500 incl GST	1333 excl GST
Selling price is made up of Commission at 40%	600 incl GST	533 excl GST
Payment to Artist	900 incl GST	800 excl GST
GST to pay to IRD (on total sale)	167 GST	167 GST
GST to claim from IRD (from commission paid)	100 GST	Nil
GST difference to pay	67 GST	167 GST
ARTIST		
60 % income from sale of artwork	900 incl GST	800 excl GST
GST to pay to IRD	100 GST	Nil
GST to claim from IRD	Nil	Nil
GST difference to pay	100 GST	Nil
Gross Income (subject to income tax)	800	800

NOTE: The dealer is required by law to sell the artwork at a GST inclusive price whether the artist is registered or not. GST calculations are based on 12.5% (rate current at time of publication).

payable to them at a GST inclusive price. This brings about the first possible variation that could happen, and that is where the commission is calculated either inclusive of GST, or plus GST. If it's 'plus GST', then it means there is going to be less in the hand for you, as the artist.

Secondly, with the gallery or art dealer having to account for GST on the total sale price, the amount they will use to calculate their commission on will vary depending on whether the artist is GST registered or not. These differences are shown in the two columns in the example.

We have shown a simple set of obligations of both the art dealer and the artist, identifying both the GST amounts each party has to pay, plus the taxable income of \$800 the artist would be declaring in their annual income tax return.

What isn't explained in this example is that all artists, GST registered or not, will be able to offset their taxable income with any deductible business expenses, either charged by the art dealer, or those incurred directly in producing the artwork. This could be the cost of materials, framing, having an exhibition, advertising, travel, running a studio or home office, etc.

If this still sounds confusing, IRD does have a free advisory service available to anyone starting up or already in business that will assist you with those unanswered questions. If you think this is something you might want to use, requests for a meeting with one of the advisors can be made either through the online services on the website www.ird.govt.nz, or by phoning 0800 377 774.

Discounts

A dealer is obligated to represent an artist in as full a capacity as possible. This obligation extends to setting and maintaining the value of a work.

Discounting of an artwork is discouraged as it undermines expectations of value on other works produced by the same artist. A dealer should discuss the issue of discounts with an artist from the outset.

If a gallery does on occasion offer discounts to its customers, then this needs to be communicated to the artist either as part of any initial discussions regarding representation or as an element of a contractual agreement.

This obligation also extends to the artist on direct sales. It is expected that an artist will not sell direct to customers. If this should occur then the artist should sell the work at a price comparable to the works sold by a dealer. It is also expected that a dealer will be aware of the sale and that this be outlined in any agreements made between the artist and the dealer prior to representation.

exterior exhibition and funding

Commissions

- If an artist has been approached by a prospective buyer who would like to commission a work, then it is a requirement of the artist to fulfil any written or verbal contractual obligations that they might have with a dealer. This agreement should include specific information related to gallery commission, and any other issues related to the artist/dealer relationship. Gallery commission should be based on the artist's profit, not the full value of the commission.
- If the commission is for a public work, then it is expected that the dealer would either be involved in the proposal process as per the artist's contractual obligations or the artist would make the dealer aware of their intentions.

Prizes/awards

- The gallery should send on any information it receives regarding prizes, art awards or acquisitive exhibitions that it considers of interest to its artists. The artist should notify the gallery of his/her interest in entering prizes, art awards, or acquisitive exhibitions after receiving entry forms directly from any institution.
- In such cases the artist should ensure that the gallery will be credited in documentation, catalogues, wall-labels, and opening speeches. Where the gallery has donated commission to the event, it should be acknowledged on a par with donors of an equivalent cash value.
- The terms of participation and commission rates for these events should be agreed between the artist, the gallery and the host organisation. The artist and gallery should jointly agree on an approach to prizes where the host is: a) seeking to charge a secondary rate of commission that will impact on the prior agreement on commission between artist and gallery and, b) insisting on all works selected being for sale.

- Generally, if the value of an acquired work is less than the value of the prize, where gallery commission applies, it should be calculated only on the value of the work.
- Where the artist is judged to be the recipient of the non-acquisitive award or prize, the gallery should not take a commission on the award or prize.
- Where works entered in a prize are sold to a private buyer or host organisation, they are subject to the rate of commission negotiated between artist and gallery.

Things to consider in conjunction with your dealer regarding art awards and prizes:

- Costs incurred when entering a competition. This may include entry fees, freight and packaging, insurance and damage, commission, import and export duties, acquisition.
- What are the conditions of the awards? Do you need to consider issues related to reproduction licences, copyright/intellectual property, loan of work, sale of work?
- The gallery and the artist should jointly agree on the rate of commission to be paid on different types of transactions. (For example, sales made direct from the studio, acquisitive prizes and awards received by the artist and on commission fees for projects.)



Charity auctions and fundraising events

- Should an artist wish to provide a work for a fundraising event, the gallery and the artist should come to an agreement about the gifting or pricing and commission arrangements.
- The dealer and the artist should jointly agree on a reserve price for the auction value of the work to ensure that the commercial value is not undermined.
- The gallery should respect any longstanding arrangements artists may have with fundraising events and an artist should ensure the gallery is informed about these at the start of their relationship.
- If an artist asks a dealer to forgo commission, then it is in effect a request for a donation on behalf of the gallery. This should only occur through communication with both the dealer and the artist and this relationship needs to be acknowledged in any published material produced in conjunction with the event.



Exterior funding

This refers to public and charitable funding agencies:

National agencies

e.g. Creative New Zealand

- Artists are not restricted from applying for funding from public agencies while represented by a dealer gallery. However, it is important to ensure that your project adheres to all of the relevant priorities.
- This is also applicable to dealer galleries either applying on behalf of an artist they represent, or for a specific curatorial project, or publication. As long as the proposed project falls within the funding agencies criteria for application then there are no specific restrictions.

Regional agencies

e.g. Creative Communities

- Regional agencies will generally have more specific priorities to that of a national body. This will usually include a focus on developing awareness of the arts within that community. There are no specific restrictions on an artist applying for funding for an exhibition in a dealer gallery. However, the project would have to relate significantly to the funding agencies objectives.
- This may differ from region-to-region depending on the focus of their particular funding criteria.

Charitable trusts

e.g. Lions Foundation, Sky City

- A majority of these trusts are obligated under the terms of their mission statement to fund projects that are primarily for the good of a group or community and that are non-profit and not commercially oriented. This would therefore restrict applications from dealer galleries or artists wishing to exhibit in a dealer gallery.

Public collections

- Public art agencies will often commission or attain pre-existing artworks for permanent collections. Where appropriate it is expected that the curator or acquisitions manager will interact with both the artist and the gallery representing them as per any contractual agreements between the artist and their dealer.
- If an artist is approached directly by an institution, then it is expected that the artist will refer them directly to their dealer and will adhere to any contractual obligations, which relate either to public commissions or public collections.
- In the case of an artist being represented by more than one gallery, the purchaser should make sure to approach the relevant dealer within their immediate region. If the work being acquired has been shown in a gallery outside the region, then it is the artist's obligation to liaise with both dealers in order to ensure no contract breaches have occurred.

Donating works

- An artist may also be asked, or volunteer, to donate works to a public collection in order to promote their work to an extended audience. This is not common practice. However, where appropriate it should be conducted in discussion with their dealer.

Loaning works

- Artists and dealers may be approached to lend works to public art Institutions for specific exhibitions. Usually, the artist will be approached directly. It is the artist's responsibility to inform their relevant dealer of the invitation and to discuss the implications of this fully. If the artist is offered a fee for the loan then they are obligated to make the necessary deductions as per any standing arrangements they might have with a dealer.

useful websites

www.artistsalliance.org.nz

Artists Alliance is a membership-based organisation established in 1991 as a not-for-profit incorporated society to represent and advance the professional interests of the visual artists of Aotearoa/New Zealand.

www.aucklandartfair.co.nz

The Auckland Artfair is New Zealand's only national artfair owned and operated by the professional arts community of Aotearoa. The aim is to promote contemporary New Zealand art and to build on our growing reputation as the cultural centre for the Pacific. The organisation aims to increase audiences locally and internationally by showcasing work by leading artists with professional and ethical representation through the dealer gallery association and firmly establish the Auckland artfair as the venue biannually for collectors and art lovers.

www.artfind.co.nz

A comprehensive portal of New Zealand art, promoting artists, artworks, galleries and art events nationwide.

www.thebigidea.co.nz

The Big Idea is New Zealand's online community of creative industries.

www.ird.govt.nz

New Zealand Inland Revenue Department.

www.copyright.org.nz

Copyright Council of New Zealand.

www.viscopy.com

VISCOPY is Australasia's visual arts copyright collecting agency, representing 250,000 premier Australian, New Zealand, and International visual artists.

www.fuel4arts.co.nz

Marketing tools and ideas to take your art further. A free membership based community for artists, cultural workers and consultants.

