Chapter 359

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ARTS COMMISSION

359.010 Definitions for ORS 359.010 to 359.130. As used in ORS 359.010 to 359.130, unless the context requires otherwise:

(1) "Arts" includes, but is not limited to, instrumental and vocal music; dance, drama, folk art, creative writing and poetry; architecture and landscaping design and the fields allied to them; painting, sculpture, photography; graphic and craft arts; industrial design; costume and fashion design; motion pictures, television, radio; tape and sound recording; the history, criticism, theory and practice of the arts; and the arts related to the presentation, performance, execution and exhibition of such art forms.

(2) "Association" means a nonprofit, private, incorporated or unincorporated institution, foundation, museum, organization, society or group, whether local, state, regional or national, that is operating, or doing business, in Oregon.

(3) "Chairman" means the chairman of the commission.

(4) "Commission" means the Oregon Arts Commission.

(5) "Local agencies" includes cities, counties and other public corporations and their officers, boards and commissions.

(6) "Public agencies" means state agencies and local agencies.

(7) "Private corporation" means a corporation organized for profit and authorized to do business in this state.

(8) "State agencies" includes state officers, departments, boards and commissions. [1967 c.321 §1]

359.020 Oregon Arts Commission; members; vacancies; compensation and expenses. (1) There is created the Oregon Arts Commission, consisting of nine members appointed by the Governor. The term of a member is four years, and the member shall serve until a successor is appointed and qualifies.

(2) Persons appointed members of the commission shall be citizens of Oregon well qualified by experience to make policy and recommendations in areas of concern to the commission and otherwise to perform the duties of the office.

(3) In case of a vacancy on the commission for any cause, the Governor shall appoint a successor to serve for the unexpired term.

(4) A member of the commission may be appointed to serve two consecutive terms. A member who serves two consecutive terms shall not be eligible for reappointment within one year following the expiration of the second term.

(5) A member of the commission is entitled to compensation and expenses as provided in ORS 292.495. [1967 c.321 §2; 1969 c 314 §28, 1979 c.729 §1; 1985 c.491 §1]

359.030 Objectives of commission. The objectives of the commission are:

(1) To complement, assist and strengthen existing or planned programs and activities of public and private associations in the arts to promote the broadest public benefit, while maintaining high artistic and scholarly standards.

(2) To encourage and give greater opportunities and recognition to individual Oregon artists whose work is, or gives promise of being, of high quality.

(3) To stimulate and encourage private and local initiative and financial support in connection with programs and activities in the arts. [1967 c.321 §7]

359.040 Duties of commission. To carry out its objectives the commission shall:

(1) Develop programs and plans:

(a) To encourage broad public participation in, and understanding of, programs in the arts.

(b) To encourage public interest in conserving and understanding the cultural and artistic heritage of the state and of its people.

(c) To encourage increased recognition of the contributions of the arts to the richness of community life and to the development of the individual.

(d) To assist communities within the state in establishing or conserving local cultural, historical and artistic programs.

(e) To stimulate and encourage throughout the state the presentation, enjoyment and study of the arts among the youth and elderly people.

(f) To encourage and facilitate, where feasible, wider circulation throughout the state of noteworthy programs, productions, exhibitions and performances which demonstrate the artistic and cultural resources and accomplishments of the people of Oregon.

(g) To encourage and facilitate, where feasible, programs, productions, exhibitions and performances in Oregon of outstanding works of art and artistic talent in the fields of the arts, which may be brought from outside the state.

(2) Develop, maintain and make available to the public, information concerning:

(a) The cultural and artistic resources and activities within the state.

(b) The organizations and groups conducting, supporting or fostering programs and activities involving the employment, conservation and presentation of such resources.

(3) Advise and assist upon request and within the limits of the funds available:

(a) The Governor and other state officers, public agencies, the legislature, communities of the state and the public concerning the development, housing, presentation and conservation of the artistic and cultural resources within the state.

(b) State agencies concerning the acceptance and disposition of gifts of art to the state.

(4) Develop an honors program in the arts, which includes the means for recognizing distinguished artists and other Oregon citizens whose creative works or effort or whose services of philanthropy on behalf of the arts are such as to merit the official appreciation of the people of Oregon. [1967 c.321 §8]

359.050 Powers of commission. (1) In performing its duties, the commission, within the limits of available funds, may:

(a) Conduct hearings and conferences to develop facts, to explain programs and activities, and to obtain advice.

(b) Enter into agreements with other public agencies and with associations and individuals for services which will assist the commission.

(c) Enter into agreements with other public agencies of Oregon or with agencies of other states or the Federal Government, and with private corporations, associations and individuals in Oregon or other states for cooperative endeavors which further the objectives and programs of the commission.

(d) Make grants to local agencies, to associations or to individuals for the development and conservation of programs in the arts, such grants to be made in accordance with rules adopted by the commission.

(2) In carrying out the purposes of ORS 359.010 to 359.130, the commission, in addition to the other powers granted:

(a) Shall as needed appoint committees, consultants, artists and other persons expert in subjects of concern to the commission to advise and assist the commission.

(b) May obtain from any state agency necessary assistance and data.

(c) May perform other acts necessary to carry out its duties.

(3) In compliance with ORS 183.310 to 183.550, the commission may make rules necessary to carry out the purposes of ORS 359.010 to 359.130. [1967 c.321 §9]

359.060 Officers; meetings; quorum. (1) The commission shall select from its members, a chairman, a vice chairman and other officers as necessary. The chairman or vice chairman shall serve until the expiration of a term as a member of the commission, or until the chairman or vice chairman resigns or is removed in accordance with ORS 359.080 (2).

(2) The commission shall meet annually at a time and place to be determined by the chairman. The chairman or three other members of the commission may call a special meeting upon not less than one week's notice to the other members.

(3) A majority of the members of the commission constitute a quorum for the transaction of business. [1967 c.321 §4]

359.070 Duties of chairman and vice chairman; employees. (1) The chairman shall be the chief executive officer of the commission. The chairman shall be responsible for the expenditure of all commission funds and shall sign all vouchers for obligations incurred or for expenditures authorized by the commission.

(2) The chairman, on behalf of the commission, shall execute all agreements, contracts or other documents entered into or approved by the commission.

(3) Subject to any applicable provisions of the State Personnel Relations Law, and the approval of the commission, the chairman may employ or remove executive, technical and expert assistants and other employees as needed and fix their compensation. However, executive, technical and expert assistants shall be in the unclassified service for purposes of the State Personnel Relations Law.

(4) The vice chairman shall perform the duties assigned by the chairman and, in accordance with the rules of the commission, shall perform the duties and have the powers of the chairman when the chairman is temporarily unable to perform the duties of the chairman. [1967 c 321 §5]

359.080 Vacancy in office of chairman or vice chairman. (1) If the chairman or vice chairman resigns or is removed from office, a new chairman or vice chairman shall be elected by the commission. Until a new chairman is elected, the vice chairman shall act as chairman.

(2) The commission by a two-thirds vote of the members may declare the office of chairman or vice chairman vacant if the chairman or vice chairman is unavailable or

otherwise unable to perform the duties of office satisfactorily. [1967 c.321 §6]

359.090 [1967 c.321 §13; repealed by 1975 c.605 §33]

359.095 [1975 c.53 §4, repealed by 1979 c.729 §3]

359.100 Grants and services from public and private sources. (1) The commission shall prepare and study plans for participation of public agencies and associations in Federal Government programs for the support and encouragement of the arts.

(2) The commission may apply for and accept grants or services from the Federal Government or any of its agencies, from associations, individuals and private corporations to carry out the purposes of ORS 359.010 to 359.130.

(3) Grants or services from individuals, associations or private corporations shall not be accepted if restricted to a use which would be contrary to the laws of this state. [1967 c.321 §10]

359.110 Gifts; commission as custodian. (1) The commission may solicit and accept gifts, bequests or devises of money, securities or other property of whatever character to carry out the purposes of ORS 359.010 to 359.130. A restricted gift, bequest or devise shall not be accepted if such restriction would be contrary to the laws of this state.

(2) The commission shall be the custodian of any securities or other property accepted as a gift, bequest or devise. The commission shall hold such property as trustee for the state and shall conserve and administer such property to carry out the purposes of ORS 359.010 to 359.130. Except as prohibited by law or restricted by the terms of the gift, bequest or devise, the commission may sell or exchange any property accepted as a gift, bequest or devise as it may from time to time determine. The income from such money, securities or other property shall be credited to the Arts Trust Account established by ORS 359.120. [1967 c.321 §11]

359.120 Arts Trust Account. There hereby is established in the General Fund of the State Treasury an account to be known as the Arts Trust Account. All money received by the commission pursuant to ORS 359.100 and 359.110 shall be paid into the State Treasury and credited to the Arts Trust Account. All moneys in such account hereby are appropriated continuously for and shall be used by the commission in carrying out the purposes for which the funds were received. [1967 c.321 §12]

359.130 Powers not granted or transferred. (1) The commission shall not direct, supervise or control the policy, programs, personnel, curriculum or administration of any public or private agency, school, association or entity having to do with the arts.

(2) Nothing in ORS 359.010 to 359.130 is intended to transfer from any other state agency to the commission any duty or power granted by statute to such other state agency prior to July 1, 1967. [1967 c.321 §14]

359.140 Arts Development Fund; source; uses. (1) There is established as a separate and distinct fund in the State Treasury an Arts Development Fund. The Arts Development Fund shall consist of:

(a) An amount credited to the fund under ORS 305.749, which shall be transferred by the Department of Revenue to the fund.

(b) Gifts, grants and donations, in money or otherwise, for use as described in subsection (2) of this section, which the State Treasurer may solicit and accept from private and public sources and shall cause to be deposited and credited to the Arts Development Fund.

(c) Interest or other earnings on the amounts described in paragraphs (a) and (b) of this subsection which shall inure to the benefit of the Arts Development Fund.

(2) Moneys contained in the Arts Development Fund are continuously appropriated for the purposes of grants to tax exempt organizations or associations to encourage development of high quality and artistically significant arts activities or cultural facilities in local areas. [1981 c.411 §3; 1987 c.758 §3; 1989 c.987 §20]

359.150 Control of Arts Development Fund by commission. The Oregon Arts Commission created under ORS 359.020 shall have access to and control of the moneys held in the Arts Development Fund, but shall use such moneys only for the purposes of ORS 359.140 (2). [1981 c.411 §4]

ART TRANSACTIONS

(Consignments)

359.200 Definitions for ORS 359.200 to 359.255. As used in ORS 359.200 to 359.255:

(1) "Art dealer" means an individual, partnership, firm, association or corporation, other than a public auctioneer, that undertakes to sell a work of fine art created by another.

(2) "Artist" means the creator of a work of fine art or, if the artist is deceased, the artist's personal representative, heirs or legatees.

(3) "Consignee" means an art dealer who receives and accepts a work of fine art from a consignor for the purpose of sale or exhibition, or both, to the public on a commission or fee or other basis of compensation.

(4) "Consignment" means delivery of a work of fine art to an art dealer for the purpose of sale or exhibition, or both, to the public by the art dealer at other than a public auction.

(5) "Consignor" means an artist or any person who delivers a work of fine art to an art dealer for the purpose of sale or exhibition, or both, to the public on a commission or fee or other basis of compensation.

(6) "Fine art" means:

(a) An original work of visual art such as a painting, sculpture, drawing, mosaic or photograph;

(b) A work of calligraphy;

(c) A work of original graphic art such as an etching, lithograph, offset print, silk screen or other work of similar nature;

(d) A craft work in materials including but not limited to clay, textile, fiber, wood, metal, plastic, glass or similar materials; or

(e) A work in mixed media such as a collage or any combination of the art media described in this subsection. [1981 c.410 §1; 1985 c.830 §1]

359.205 Delivery of art work to dealer as consignment; exception for direct sale work as trust property. (1) Notwithstanding any custom, practice or usage of the trade to the contrary, whenever an artist delivers or causes to be delivered a work of the artist's own creation to an art dealer in this state for the purpose of exhibition or sale, or both, on a commission, fee or other basis of compensation, the delivery to and acceptance thereof by the art dealer constitutes a consignment unless the delivery to the art dealer is pursuant to an outright sale for which the artist receives or has received compensation for the work of fine art upon delivery.

(2) A work of fine art is trust property in the hands of the art dealer, who is trustee for the benefit of the artist until the work of fine art is sold to a bona fide third party.

(3) The proceeds of the sale of a work of fine art are trust property in the hands of the art dealer who is trustee for the benefit of the artist until the amount due the artist from the sale is paid. Nothing in this subsection requires a separate trust account for each artist.

(4) A work of fine art that is trust property when initially accepted by the art dealer remains trust property notwithstanding the subsequent purchase of the work of fine art by the art dealer directly or indirectly for the art dealer's own account, until the purchase price is paid in full to the artist.

(5) The trust relationship described in this section imposes no duty greater than the duties described in ORS 359.200 to 359.210, 359.220, 359.225, 359.250 and 359.255 and does not give rise to any general trust or fiduciary relationship. [1981 c.410 §2, 1985 c.830 §2]

359.210 Effect of treating art work delivery as consignment; name of purchaser to be supplied on demand. (1) A consignment of a work of fine art has the following effect:

(a) The consignee, after the delivery of fine art, shall be considered to be the agent of the consignor for the purpose of the exhibition or sale, or both, of the work of fine art within this state.

(b) The work of fine art, or the artist's portion of the proceeds from the sale of such work, shall not be subject to the claims of a creditor or consignee.

(c) A consignee is liable for the loss of or damage to the work of fine art while it is in the consignee's possession where such loss or damage is caused by the failure of the consignee to use the highest degree of care. For the purpose of this subsection, the value of the work of fine art is the value established in a written agreement between the consignor and consignee prior to the loss or damage or, if no written agreement regarding the value of the work of fine art exists, the artist's portion of the fair market value of the work of fine art.

(d) The consignee shall not be held liable for the loss of, or damage to the work of fine art if the artist fails to remove the work within a period of 30 days following the date agreed upon for removal of the work in the written contract between the artist and the consignee or, if no written agreement regarding a removal date exists, 30 days after notice to remove the work of fine art is sent by registered mail to the artist at the artist's last-known address.

(2) Upon written demand from the consignor, the consignee shall furnish the consignor with the name and address of the purchaser of the consignor's work, and the date of purchase and the price paid for the work, for any sale totaling $100 or more.

(3) Failure to furnish the information specified under subsection (2) of this section by the consignor shall entitle the artist to obtain an injunction prohibiting such conduct and in addition, money damages in an amount equal to three times the artist's portion of the retail value of the work. [1981 c.410 §3; 1985 c.830 §3]

359.215 Consignment does not create rights in art dealer greater than those of artist. A consignment of a work of fine art does not convey title to or create an estate

in the work or grant a right to possession superior to that of the consignor notwithstanding the power or authority of the consignee to transfer or convey to a third person all of the right, title and interest of the consignor in and to the work. [1981 c.410 §4]

359.220 Artist and art dealer to execute consignment contract; contents; consent to display. (1) An art dealer may accept a work of fine art, on a fee, commission or other compensation basis, on consignment from the artist who created the work of fine art only if prior to or at the time of acceptance the art dealer enters into a written contract with the artist establishing:

(a) The retail value of the work of fine art;

(b) The time within which the proceeds of the sale are to be paid to the artist, if the work of fine art is sold;

(c) The minimum price for the sale of the work of fine art; and

(d) The fee, commission or other compensation basis of the art dealer.

(2) An art dealer who accepts a work of fine art on a fee, commission or other compensation basis on consignment from the artist may use or display the work of fine art or a photograph of the work of fine art or permit the use or display of work or photograph only if:

(a) The art dealer gives notice to users or viewers that the work of fine art is the work of the artist; and

(b) The artist gives prior written consent to the particular use or display. [1981 c.410 §5; 1985 c.830 §4]

359.225 Payment of sale proceeds of consigned work; funds due artist not subject to claims of dealer's creditors. The proceeds from a sale of a work of fine art on consignment shall be paid to the consignor within 30 days of receipt by the consignee unless the consignor expressly agrees otherwise in writing. If the sale of the work of fine art is on instalment, the funds from the instalment shall first be applied to pay any balance due the consignor on the sale, unless the consignor expressly agrees in writing that the proceeds on each instalment shall be paid according to the percentage established by the consignment agreement. The artist's portion of funds received on the sale of the work of fine art or on instalment shall not be subject to the claims of a creditor of the consignee. [1981 c.410 §6, 1985 c.830 §5]

359.230 Contract provision waiving protections for artist is void. Any provision of a contract or agreement whereby the consignor waives any of the provisions of ORS 359.200 to 359.255 is void. [1981 c.410 §7]

359.235 ORS 359.200 to 359.240 not to affect prior transactions; effect of Uniform Commercial Code. (1) Nothing in ORS 359.200 to 359.255 is intended to affect any written or oral contract or agreement in existence prior to November 1, 1981, unless the parties agree by mutual written consent that ORS 359.200 to 359.255 shall apply or the contract is extended or renewed after November 1, 1981.

(2) ORS 359.200 to 359.255 is applicable notwithstanding the absence of, or conflict with, any written agreement, receipt, note or memorandum entered into on or after November 1, 1981, between the consignor and the consignee concerning any matter covered by ORS 359.200 to 359.255. ORS 359.200 to 359.255 controls over any conflicting provisions of the Uniform Commercial Code. [1981 c.410 §§8, 10]

359.240 Art dealer prohibited from diverting sale proceeds; penalty. It shall be unlawful for a consignee wilfully and knowingly to secrete, withhold or appropriate a work of fine art or the proceeds from sale thereof for the consignee's own use or the use of any person other than the consignor, except pursuant to a bona fide sale or as otherwise consistent with the terms of consignment. Violation of this section is a Class C felony. [1981 c.410 §9]

359.250 Liability of art dealer for violation of ORS 359.220. (1) An art dealer violating ORS 359.220 is liable to the artist for $100 plus actual damages, including incidental damages sustained as a result of the violation.

(2) If an art dealer violates ORS 359.220, the artist's obligation for compensation to the art dealer is voidable by the artist. [1985 c.830 §7]

359.255 Attorney fees. In any action under any provision of ORS 359.200 to 359.255, the court may award reasonable attorney fees and costs to the prevailing party. [1985 c.830 §8]

(Fine Print Disclosure Statements)

359.300 Definitions for ORS 359.300 to 359.315. As used in ORS 359.300 to 359.315:

(1) "Artist" means the person who conceived or created or conceived and created the master image for, or which served as a model for, the print.

(2) "Fine print" includes, but is not limited to, an engraving, etching, woodcut, lithograph, monoprint or serigraph.

(3) "Impression" means the printed image on suitable material whether paper or any

other substance, made off the plate by printing, stamping, casting or any other process commonly used in the graphic arts.

(4) "Plate" means the plate, stone, block or other material used for the purpose of creating the print from which the impression or impressions were taken.

(5) A fine print is "signed" if the artist autographs the finished print, irrespective of whether it was signed or unsigned in the plate.

(6) "Reproduction" means a copy of a fine print, but not a unique print made from the original plate. [1981 c.726 §1]

359.305 Disclosure statements required; disclaimer; exception for reproduction. (1) No person, engaged in the business of selling fine prints, shall sell a fine print, at wholesale or at retail, unless the person furnishes the purchaser a certificate or a written invoice or receipt for the purchase price which clearly and conspicuously discloses and warrants all of the applicable information about a fine print set forth in ORS 359.310.

(2) If the seller disclaims knowledge as to any applicable item of information set forth in ORS 359.310, the seller shall so state specifically and categorically with regard to each such item.

(3) If the seller describes a fine print as a reproduction, the seller need not furnish any further information. [1981 c 726 §2]

359.310 Contents of disclosure statement. The following information about a fine print shall be furnished as provided in ORS 359.305:

(1) The name of the artist and the year when printed.

(2) Exclusive of trial proofs, whether the edition is being offered as a limited edition, and, if so:

(a) The authorized maximum number of signed or numbered impressions, or both, in the edition;

(b) The authorized maximum number of unsigned or unnumbered impressions, or both, in the edition;

(c) The authorized maximum number of artist's, publisher's, printer's or other proofs, if any, outside of the regular edition; and

(d) The total size of the edition.

(3) Whether the plate has been destroyed, effaced, altered, defaced or canceled after the current edition.

(4) If there were any prior states of the same impression, the total number of states and a designation of the state to which the subject print relates.

(5) If there were any prior or later editions from the same plate, the series number of the subject edition and the total size of all other editions.

(6) Whether the edition is a posthumous edition or restrike and, if so, whether the plate has been reworked.

(7) The name of the workshop, if any, where the edition was printed. [1981 c.726 §3]

359.315 Liability for failure to disclose; treble damages. (1) A person who offers or sells a fine print in violation of ORS 359.300 to 359.315 shall be liable to the person purchasing such fine print. The purchaser may recover the consideration paid for such print, with interest at the legal rate upon the tender of the print.

(2) In any case in which a person wilfully offers or sells a fine print in violation of ORS 359.300 to 359.315, the person purchasing the fine print may recover from the person who offers or sells the fine print an amount equal to three times the amount required under subsection (1) of this section. [1981 c.726 §5]

(Art Work Reproduction Rights)

359.350 Definitions for ORS 359.350 to 359.365. As used in ORS 359.350 to 359.365:

(1) "Artist" means the creator of a work of fine art.

(2) "Fine art" means a painting, sculpture, drawing, photograph, craft work, fiber art or work of graphic art.

(3) "Fine print" includes, but is not limited to, an engraving, etching, woodcut, lithograph, monoprint or serigraph, but does not include industrial designs.

(4) "Industrial design" means the aesthetic appearance of an article used in commerce.

(5) "Work of fine art" means any work of visual or graphic art of any media including, but not limited to, painting, fine print, drawing, sculpture, craft, photography or film. [1981 c.824 §1]

359.355 Art work reproduction rights retained by artist unless expressly transferred; effect of federal copyright laws. (1) Whenever a work of fine art is sold or otherwise transferred by or on behalf of the artist who created it, or the heirs or personal representatives thereof, the right of reproduction thereof is reserved to the grantor until the right passes into the public domain pursuant to federal copyright laws unless the right is sooner expressly transferred by an instrument, note or memorandum in writing signed by the owner of the rights conveyed or the duly authorized agent thereof.

(2) Nothing contained in this section is intended to prohibit the fair use, as defined in the federal copyright law (17 U.S.C. §107), of such work of fine art. [1981 c.824 §2]

359.360 Ownership of physical work of art remains with artist unless expressly transferred. Whenever an exclusive or nonexclusive conveyance of any right to reproduce, prepare derivative works based on, distribute copies of or publicly display a work of fine art is made by or on behalf of the artist who created it or the owner at the time of the conveyance, ownership of the physical work of fine art shall remain with and be reserved to the artist or owner, as the case may be, unless such right of ownership is expressly transferred by an instrument, note, memorandum or other writing, signed by the artist, the owner or the duly authorized agent thereof. [1981 c.824 §3]

359.365 Ambiguity in agreement transferring right to reproduce art work resolved in favor of artist. Whenever an exclusive or nonexclusive conveyance of any right to reproduce, prepare derivative works based on, distribute copies of or publicly display a work of fine art is made by or on behalf of the artist who created it or the owner at the time of the conveyance, any ambiguity with respect to the nature or extent of the rights conveyed shall be resolved in favor of the reservation of rights by the artist or owner unless in any given case the federal copyright law (17 U.S.C. §1 et seq.) provides to the contrary. [1981 c.824 §4]