



D I S T R I C T O F C O L U M B I A B A R
Arts, Entertainment, Media and Sports Law Section

**One-Page Summary of a
Proposed Public Statement by the
Arts, Entertainment, Media and Sports Law Section
Supporting the Artist Protection Act of 2009 (Bill 18-451)**

The views expressed herein represent only those of the Arts, Entertainment, Media and Sports Law Section of the District of Columbia Bar and not those of the D.C. Bar or of its Board of Governors.

Recent changes to the D.C. Code, which have eliminated the District of Columbia's artist consignment law (D.C. Code Ann. § 28:9-114), have left a significant omission that compromises the ownership rights of consignor-artists in their works of art. Currently, artists who offer their works for sale through consignment arrangements with galleries in the District are exposed to the potential for loss through seizure by a consignee-gallery's creditors in the event of bankruptcy of the gallery, even though the gallery itself does not hold title to the works held on consignment. As a result of these statutory changes, some local artists have indeed lost their works in recent gallery bankruptcies.

Consignment statutes in other jurisdictions provide that the consignee-gallery is the agent or "trustee" of the consignor-artist. A consignee-gallery under such a statute holds the consignor-artist's work as property in trust, with the sale proceeds held in trust for the benefit of the consignor-artist, and the work is not subject to the gallery's creditors' claims. The Artist Protection Act of 2009 (Bill 18-451), address this omission in the D.C. Code by providing a fair and just measure of protection to the local artistic community by reinstating an additional layer of legal protection beyond UCC 9-102(a)(20), which does not protect the artist against claims of a gallery's creditors, and the filing of a UCC-1 form, which most artists do not know to be an option.

The Arts, Entertainment, Media and Sports Law ("AEMS") Section of the D.C. Bar represents nearly 700 D.C. Bar members with an interest in Arts, Entertainment, Media and Sports Law. The Steering Committee of the AEMS Section voted to adopt this Public Statement unanimously. The principal drafter of this Public Statement was Section Steering Committee member and Arts and Cultural Law Committee Liaison David Johnstone.



D I S T R I C T O F C O L U M B I A B A R
Arts, Entertainment, Media and Sports Law Section

Statement in support of the Artist Protection Act of 2009 (Bill 18-451)

The views expressed herein represent only those of the Arts, Entertainment, Media and Sports Law Section of the District of Columbia Bar and not those of the D.C. Bar or of its Board of Governors.

The Steering Committee of the Arts, Entertainment, Media and Sports Law Section of the District of Columbia Bar¹, on behalf of the Section, has voted to support the Artist Protection Act of 2009 (Bill 18-451). The Steering Committee of the Corporation, Finance, and Securities Law Section has voted to cosponsor this Public Statement².

Recent changes to the D.C. Code, which have eliminated the District of Columbia's artist consignment law (D.C. Code Ann. § 28:9-114), have left a significant omission that compromises the ownership rights of consignor-artists in their works of art. Currently, artists who offer their works for sale through consignment arrangements with galleries in the District are exposed to the potential for loss through seizure by a consignee-gallery's creditors in the event of bankruptcy of the gallery, even though the gallery itself does not hold title to the works held on consignment. As a result of these statutory changes, some local artists have indeed lost their works in recent gallery bankruptcies.

The Arts, Entertainment, Media and Sports Law Steering Committee supports the Artist Protection Act of 2009 (Bill 18-451), revisionary legislation proposed by Councilmember Mary Cheh, which would address this significant weakness currently in the code. It believes that the proposed revision would again provide a fair and just measure of protection to the local artistic community by reinstating an additional layer of legal protection beyond UCC 9-102(a)(20), which does not protect the artist against claims of a gallery's creditors, and the filing of a UCC-1 form, which most artists do not know to be an option.

Consignment statutes in other jurisdictions provide that the consignee-gallery is the agent or "trustee" of the consignor-artist. A consignee-gallery under such a statute holds the consignor-artist's work as property in trust, with the sale proceeds held in trust for the benefit of the consignor-artist, and the work is not subject to the gallery's creditors' claims. Over two dozen states currently have such consignment laws: Alaska, Arizona, Arkansas, California,

¹ The Arts, Entertainment, Media and Sports Law ("AEMS") Section of the D.C. Bar represents 669 D.C. Bar members with an interest in Arts, Entertainment, Media and Sports Law. The Steering Committee of the AEMS Section voted to adopt this Public Statement by unanimous vote, on September 14, 2010. The principal drafter of this Public Statement was Section Steering Committee member and Arts and Cultural Law Committee Liaison David Johnstone.

² The Corporation, Finance and Securities Law Section (CFSL) of the D.C. Bar represents 2520 D.C. Bar members with an interest in corporation, finance and securities law. The Steering Committee of the CFSL Section voted to adopt this Public Statement by a vote of 5-0 with three members not present and one abstention., on September 21, 2010.

Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Washington and Wisconsin. Some of these statutes are expansive (e.g., New York's and Oregon's), and some (e.g., Wisconsin's) provide for attorney's fees.

Respectfully Submitted,

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