

Trust galleries or trust accounts

ART WORLD ACCOUNTANT **TOM LOWENSTEIN** BELIEVES THAT DESPITE WIDESPREAD ACKNOWLEDGMENT OF THE VIRTUE OF KEEPING SEPARATE ACCOUNTS FOR ARTISTS' FUNDS, FEW OF AUSTRALIA'S COMMERCIAL GALLERIES HAVE SET UP TRUST ACCOUNTS.

I wonder how many collectors consider what happens after they have purchased an artwork from a gallery representing contemporary artists.

Many collectors acquire works not only for their aesthetic quality or for their potential investment value, but as part of a genuine desire to support artists. These collectors would be keen to know that once they have paid the gallery for the work, the artist was being promptly paid soon after. It isn't always the case.

Consider this typical scenario. Normally galleries charge a commission of 40 per cent as well as either all, or a proportion of, the costs associated with the printing of the catalogue, invitations, advertisements, postage, drinks and other costs associated with the opening and the exhibition. (Although galleries have varying arrangements with different artists, the industry as a whole has established these broad principles which most galleries follow.) In many instances, where it appears that the artist has had a successful or sellout exhibition, the actual return to him or her can be quite disappointing.

For example, even where the artist has sold works for say \$100,000, (not a very common occurrence), after the \$40,000 commission is extracted along with exhibition costs varying between \$5,000 and \$10,000, the artist is left with just over \$50,000. After deducting the costs of art materials, framing and studio expenses, this doesn't leave a great surplus for what often is a year's work.

However, in some instances the artist is confronted with another problem.

Whilst most galleries are meticulous with their paperwork, and will pay the artists promptly, there are a few galleries, who, for various reasons, delay payment as long as possible.

In my capacity as an accountant I've received many complaints from artists over issues around timely payment. These include:

- ◆ drip feeding of payments over a period of months after an exhibition, with the gallery sometimes citing non-payment from purchasers, but at other times giving no reason;
- ◆ payment for works only after a request is made for their return by the artist, with a memo in the order of "you wouldn't believe it, but we sold your work only last week!";
- ◆ reluctance of galleries to provide artists with details of the purchasers of their works;
- ◆ no regular reconciliation of artists' works and accounts;
- ◆ galleries giving discounts or extended terms to clients without consultation with the artists.

An art gallery is a unique type of business. It has an advantage compared to most other retail businesses in that it does not buy stock. Most works are left by artists on consignment. This enables people with limited capital to open galleries, relying on income from exhibitions to cover their overhead expenses.

In the early 1990s the art market became depressed, sales dropped dramatically, and some galleries had to close their doors owing artists substantial monies. Fortunately, over the past decade with the general economy being buoyant, most commercial galleries have been able to meet their commitments. However, there is a concern that if there is a downturn in the economy, the consequent flow on to commercial galleries will again leave artists exposed.

In an attempt to protect the artists' financial position, I have been advocating for the past decade that galleries maintain a trust account for their artists' dealings in the same way that solicitors, estate agents, and insurance brokers are required by law to operate.

In October 2003 the Australian Commercial Galleries Association, the National Association for the Visual Arts and the Australia Council formulated a Code of Practice on the relationship between artists and their galleries. The code recommends that the proceeds of a sale should be lodged into an account separate from the gallery's funds, and that if a gallery did not maintain separate accounts it should disclose this fact in writing to its artists.

But unfortunately, I believe that currently few galleries in the whole of Australia operate a separate account for funds due to artists. ■

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