



## Anatomy of a Commission Agreement

A wealthy patron hires a conceptual modern artist to create an avant-garde, memorable work of art to display at the center of the patron's collection. The patron pays the artist \$150,000 for the artwork to be created. Some months later the artist presents the patron with a six pack of Coors covered in lipstick and bacon grease. Everyone wins?

In this anatomy of a Commission Agreement, we explore the relationship between artists and their patrons. It is an interesting relationship often fraught with potential conflicts and problems.

### **There is a natural tension between artists and their patrons.**

Artists, on the one hand, are usually concerned about artistic freedom and expression, creativity and inspiration (and hopefully making some money). Patrons, on the other hand, are usually focused more on the return on their investment (not that there is anything wrong with that) and receiving a piece of art that meets their specific expectations and tastes.

### **The Importance of a Commission Agreement**

Because of this natural tension and the fluid and subjective nature of the creative process, it is important for artists and patrons to have clear, complete and understandable commission agreements. The commission agreement should address the parties' respective expectations, rights and obligations. Nobody likes or wants unpleasant surprises for either party during the creative process or at its conclusion when the commissioned artwork is delivered.

There is no magic formula in art law for a commission agreement. The agreement itself can be as unique as the parties involved or the artwork(s) resulting from them. However, the following are common terms and conditions that should be addressed in most commission agreements:

- At least a basic description of what is to be created, including:
  - The expected medium or media to be used to create the artwork (i.e., is it going to be a steel sculpture or an oil painting on canvas, etc.); and
  - The approximate size/dimensions of the artwork.

- A deadline for completion and/or delivery of the artwork (and whether or not time is of the essence with regard to such delivery).
- An agreed-upon approval process for sketches, models and the like and any other relevant creative benchmarks (including a provision for who owns such sketches, etc.).
- Obligations related to the cost of physical creation of the artwork, including:
  - Which party will furnish and/or pay for the materials to be used in the artwork; and
  - Which party is responsible for necessary fabrication, shipping, assembly or installation of the artwork and/or the cost(s) thereof.
- An agreed-upon delivery location and/or an installation site, if applicable.
- Who is responsible for insuring the artwork (and materials) during creation, shipping and installation of the artwork?
- The artist's and patron's respective rights and obligations for inspections of the work-in-progress by the patron.
- Any representations and warranties by the artist as to the artwork's originality, non-infringement of third-party rights, workmanship, and clear and unencumbered title.
- The agreed-upon price for the artwork and payment schedule, if any.
- Ownership and control of the copyrights for the completed artwork and/or any derivative and/or related works created in connection with the commissioned artwork.
- Whether or not the artist waives or retains any moral rights with respect to the artwork ultimately created.
- What happens if the artist dies or becomes disabled prior to completion of work?
- The patron's remedies for the artist's failure to complete the work for reasons other than death or disability.

- The patron's satisfaction and acceptance of the artwork ultimately created and delivered/installed (*i.e.*, a "money back guarantee").
- And, never overlook taxes (*i.e.*, sales tax, etc.).

This list is by no means exhaustive or exclusive. A comprehensive commission agreement requires thoughtful discussions and planning by the parties involved.

Commission agreements, like the artworks they cover, may require great patience, creativity and collaboration to craft. But, in the end, a clear, complete and understandable agreement will benefit both patron and artist by minimizing or even eliminating misunderstandings and disputes, and it will certainly breed collaboration for the creative endeavor (even before any artwork is created).

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