

## Art Law Gallery

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### Fine Art Prints in California: Having the Right Paper Matters

In recent years, the production of multiples from an original work of art, especially fine art prints, has become a major business in the art world. What distinguishes a mere poster from a valuable, collectible, fine art print, is usually the scarcity and quality of the work in question. In other words, prints that are produced using high quality materials, hand signed by the artist, and sold in a limited edition are likely to be more collectible (and thus have higher resale values) than posters that are produced using low quality, inexpensive materials, unsigned by the artist, and ubiquitous.

In an effort to enable prospective purchasers to make informed decisions as to the value of a fine art print, many states, including California, have adopted statutes that require disclosure of certain information prior to the sale of a fine art print. For example, the California Fine Prints Act, also known as the Farr Act (Cal. Civ. Code §1740 *et seq.*, available at <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=civ&codebody=&hits=20>), is a consumer protection statute that applies to art multiples, including fine art prints, that are offered or sold by art dealers for one hundred dollars or more, exclusive of any frame.

The term "art dealer" is defined under the Farr Act as a person who is in the business of dealing exclusively or non-exclusively in fine art multiples, including an auctioneer, or who is holding himself or herself out as having such knowledge or skill. Among other things, the Farr Act requires art dealers who sell, offer to sell, or consign fine art prints in or from California, to furnish to the buyer or consignee a certificate of authenticity of such print prior to the sale or consignment. To the extent that an art dealer is distributing catalogues, flyers or other advertising material that constitute an offer to effect a direct sale of a specific fine print, a certificate of authenticity for the print must be disclosed in "close physical proximity" to the description of the print.

The certificate of authenticity is a document that provides the prospective buyer or consignee of a fine art print with information that is likely to have a material effect on such print's value and collectibility, and generally includes the following: the title of the print, the artist's name, whether the artist signed the print, the manner in which the artist signed the print (e.g. signature from stone engraving versus signature in pencil), whether the print is being offered as a limited edition, whether or not there is more than one edition or limited edition of the print, the number of prints produced in each such edition, and a description of the process and material used in producing the print. If certain legally-required disclosures for a particular fine art print are not

known, the Farr Act permits the art dealer to include a disclaimer on the certificate of authenticity. However, in order to be effective, the disclaimer to a particular piece of material information must be clearly, specifically and categorically stated within the physical context of the other information disclosed in the certificate of authenticity.

Under the Farr Act, if an art dealer offers or sells a fine art print without furnishing the buyer with a certificate of authenticity, or if the certificate provides information which is mistaken, erroneous or untrue, the art dealer is liable to the purchaser under a standard of strict liability. Specifically, the art dealer's liability is equal to the purchase price of the fine art print plus the legal interest rate thereon, provided that the purchaser returns the print to the dealer in its original condition. Furthermore, if the purchaser establishes that the art dealer willfully violated the requirements of the Farr Act, the art dealer may be held liable for treble damages.

Any art dealer who violates the Farr Act by providing a prospective buyer with false or misleading information on the certificate of authenticity for a fine art print is also likely to be in violation of California's unfair competition law (Cal. Bus. & Prof. Code §17500 *et seq.*, available at <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=bpc&codebody=&hits=20>), which prohibits unlawful, unfair and fraudulent business acts or practices, as well as deceptive advertising. Indeed, in California it is unlawful to engage in deceptive, false and misleading advertising in connection with the sale or disposition of real or personal property or services and any person, firm, corporation or association damaged may bring an action to obtain an injunction to stop unfair, unlawful, or fraudulent business practices and false advertising, and to obtain restitution for money lost or gained by the defendants as a result of the wrongful conduct. In situations involving defective certificates, an aggrieved purchaser might also seek redress from an art dealer under California common law actions for fraud and/or breach of an express warranty. Under federal law, such a purchaser might also seek to hold a deceptive art dealer liable for damages under 15 U.S.C. § 1125(a) of the Lanham Act, which imposes liability on a party for false advertising either as the result of *per se* or *de facto* falsity where the advertising has the likelihood of causing confusion or misleading a customer.

Although the Farr Act was passed into law almost forty years ago, many art dealers remain unaware of its disclosure requirements and the potential liabilities associated therewith. Accordingly, when considering the sale or consignment of a fine art print, art dealers, galleries and auction houses should not only ascertain the quality and marketability of a fine art print, but also consult an attorney to verify that each such print is accompanied by a proper and accurate certificate of authenticity in conformity with applicable state and/or federal law.