

FINE ART CONSIGNMENT AGREEMENTS

Presented by John R. Cahill, Lynn & Cahill LLP

"I love the gallery, the arena of representation. It's a commercial world, and morality is based generally around economics, and that's taking place in the art gallery."

—Jeff Koons

"I wish to be cremated. One tenth of my ashes shall be given to my agent, as written in our contract."
—From the Last Will and Testament of Julius "Groucho" Marx

I. Basic Types of Consignment Agreements

- a. Collector-Dealer Agreements
- b. Artist-Dealer Agreements
- c. Auction House Agreements

The focus below is on "Collector-Dealer" Agreements.

II. Basic Legal Terminology and Principles

- a. Collectors are usually "Consignors" giving the art to "Consignee"/Dealers to sell.
- b. The legal relationship between Consignor and Consignee falls under the law of "Agency."
- c. Agents (Dealer-Consignees) owe a "fiduciary duty" to their Principals (Consignors).
 - i. A "fiduciary duty" is the highest form of duty in the law. How high? Here is a famous formulation by the late,

great Justice Cardozo. He called it "the duty of the finest loyalty" and went on eloquently in a famous case:

*Many forms of conduct permissible in a workaday world for those acting of arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something **stricter than the morals of the market place**. Not honesty alone, but the punctilio of an honor the most scrupulous, is then the standard of behavior. As to this there has developed a tradition that is unending and inviolable. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty . . . Only thus has the level of conduct for fiduciaries been kept at a level higher than that **attainable by the crowd**.*

- ii. This was applied to art agents most dramatically back in the 1980's in *Crystalline v. Christie's*:

[T]he Agent has a fiduciary duty to act in the utmost good faith and in the interest of . . . its principal' . . .

- d. Agents can, however, modify—that is, lessen—their fiduciary duties by contract.

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RD Boyd



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Table of Contents Fine Art Consignment Agreements Dewitt Stern Group Free

1. Understanding the eBook Fine Art Consignment Agreements Dewitt Stern Group Free
 - The Rise of Digital Reading Fine Art Consignment Agreements Dewitt Stern Group Free
 - Advantages of eBooks Over Traditional Books
2. Identifying Fine Art Consignment Agreements Dewitt Stern Group Free
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Fine Art Consignment Agreements Dewitt Stern Group Free
 - User-Friendly Interface
4. Exploring eBook Recommendations from Fine Art Consignment Agreements Dewitt Stern Group Free
 - Personalized Recommendations
 - Fine Art Consignment Agreements Dewitt Stern Group Free User Reviews and Ratings
 - Fine Art Consignment Agreements Dewitt Stern Group Free and Bestseller Lists

5. Accessing Fine Art Consignment Agreements Dewitt Stern Group Free Free and Paid eBooks
 - Fine Art Consignment Agreements Dewitt Stern Group Free Public Domain eBooks
 - Fine Art Consignment Agreements Dewitt Stern Group Free eBook Subscription Services
 - Fine Art Consignment Agreements Dewitt Stern Group Free Budget-Friendly Options
6. Navigating Fine Art Consignment Agreements Dewitt Stern Group Free eBook Formats
 - ePub, PDF, MOBI, and More
 - Fine Art Consignment Agreements Dewitt Stern Group Free Compatibility with Devices
 - Fine Art Consignment Agreements Dewitt Stern Group Free Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Fine Art Consignment Agreements Dewitt Stern Group Free
 - Highlighting and Note-Taking Fine Art Consignment Agreements Dewitt Stern Group Free
 - Interactive Elements Fine Art Consignment Agreements Dewitt Stern Group Free
8. Staying Engaged with Fine Art Consignment Agreements Dewitt Stern Group Free
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Fine Art Consignment Agreements Dewitt Stern Group Free
9. Balancing eBooks and Physical Books Fine Art Consignment Agreements Dewitt Stern Group Free
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Fine Art Consignment Agreements Dewitt Stern Group Free
10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine Fine Art Consignment Agreements Dewitt Stern Group Free
 - Setting Reading Goals Fine Art Consignment Agreements Dewitt Stern Group Free
 - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Fine Art Consignment Agreements Dewitt Stern Group Free
 - Fact-Checking eBook Content of Fine Art Consignment Agreements Dewitt Stern Group Free
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning

- Utilizing eBooks for Skill Development
- Exploring Educational eBooks

14. Embracing eBook Trends

- Integration of Multimedia Elements
- Interactive and Gamified eBooks

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