

The California Resale Royalty Act (Civil Code section 986)

entitles artists to a royalty payment upon the resale of their works of art under certain circumstances. This California law is unique in the United States, although it is a well-established legal right in many other countries of the world. The right of artists to share in the appreciated value of their works when resold is important both in principle and in dollars. However, in part because many artists are unaware of their rights and in part because some artists are afraid to assert their rights, enormous sums of money due to artists have gone uncollected.

The California Resale Royalty Act provides that, with a few exceptions, the seller must pay the artist (or, in some cases, a deceased artist's estate) 5 percent of that resale price. Certain sales by an art dealer will not generate a resale royalty. [Read the full Code.](#)

Although some sellers, either out of ignorance or intransigence, have failed to pay resale royalties which were owed to artists, countless artists have successfully collected resale royalties ranging from \$50 to several thousand dollars. It is impossible to determine precisely how many royalties have been paid and how many have not been paid. Nevertheless, it is clear that compliance will improve as more and more sellers learn the circumstances under which they must pay this resale royalty, and as more artists understand this law and become willing to assert their rights.

For example, in 1981, when Ghiradelli Square in San Francisco was sold, artist Ruth Asawa was paid a \$5,000 resale royalty. That sum represented 5 percent of the appraised value of the fountain she created some years earlier which had been sold along with the rest of Ghiradelli Square. Another interesting case involved Sacramento artist Jack Nielsen. His

sculpture was part of an office complex whose owner went bankrupt. When the real estate, including his sculpture, was sold in foreclosure, Nielsen sued claiming that, although the office complex had declined in value, the sculpture he created had appreciated from \$30,000 to \$125,000 and he was entitled to a resale royalty.

He won.

Circumstances Generating a Royalty Payment

Under California Civil Code Section 986, an artist shall be entitled to a royalty upon the resale of his/her work of art provided that:

- The work is a painting, drawing, sculpture or original work of art in glass.
- The work does not consist of stained glass permanently attached to real property.
- The seller resides in California or the sale takes place in California.
- The work is sold during the artist's life or within 20 years of the artist's death.
- The work is sold by the seller for money more than she or he paid.
- The work is resold for \$1,000 or more.
- The artist at the time of the sale (or at time of death) is a United States citizen or has been a California resident for at least two years.
- The sale is not made by an art dealer within 10 years after the initial sale by the artist, with the further proviso that the first sale and all intervening sales until the time of the resale have been made to art dealers.

Seller's Obligation

Under this law, it is the seller's obligation to locate the artist and pay the royalty due. If the seller is unable to locate the

artist within 90 days after the sale, the seller is required to pay

the royalty due the artist to the California Arts Council where it will be held for the artist for seven years. If the artist fails to claim the money due within that time, the money reverts to the California Arts Council for use in its Art in Public Buildings Program.

Recommendations to Artists

Artists should always maintain current records of the location of their works of art. This will be invaluable when artists wish to assemble their art for the retrospective. It may also help artists learn of resales of any of their art.

It should also be useful for artists to know that the California Resale Royalty Act entitles an artist to recover reasonable attorney's fees if a successful lawsuit is brought to recover the resale royalty. Most often, a letter from a lawyer advising the seller of the law's application is sufficient to assure payment of the resale royalty. If the artist does not have a good lawyer, the artist is invited to contact the California Lawyers for the Arts (CLA), a statewide nonprofit organization, which among other purposes, can provide a referral to a lawyer. For more information, contact the one of the CLA offices: San Francisco (415/775-7200), Santa Monica (310/998-5590), and Sacramento (916/442-6210).

Artists are encouraged to assert their rights under the California Resale Royalty Act.