

Under new laws, artists must register their ownership of artworks before consigning them to a gallery, in order to avoid losing all if the gallery goes under. Previously, when an artist consigned artworks to a gallery, with the understanding the gallery would sell the artworks on the artist's behalf, the art works remained the property of the artist. If the gallery then became insolvent* and went into liquidation, the consigned artworks escaped the reach of the liquidator because they were not seen to be part of the gallery's assets.

Under the new Personal Property Securities Act 2009, however, works on consignment at a gallery are considered to be part of that gallery's collateral or its security interests. This means that any artworks on loan to a gallery will be seized as part of the gallery's assets, if the gallery were to go into liquidation.

In order for artists to protect their property and prevent it from being seized they must do three things:

- 1 register every gallery where they have works on consignment with the newly created Personal Property Securities Register (PPSR), an electronic register established as part of the Act which can be found at <http://www.ppsr.gov.au/> This will cost approx \$7.40 per gallery and will last for 7 years, after which the registration will need to be renewed;
- 2 keep absolutely up to date inventories of works left on consignment with any gallery, signed by both the artist and the gallery, and keep a copy;
- 3 to help avoid losing payment for works that have been sold but for which artists have not been paid, they need to ensure that their gallery very regularly reports sales of their work to them.

The Personal Property Securities Register can be found at <http://www.ppsr.gov.au/>

Artists should contact the PPSR (<http://www.ppsr.gov.au/>) or Arts Law (<http://www.artslaw.com.au/>) for more information on the operation and requirements of new personal property securities regime before consigning works to a gallery.

To help you avoid this eventuality, it's important to verify that any gallery representing you has proper recording, accounting and reporting processes in place and you should request to be sent a statement of accounts regularly.

This regular report might assist in raising any concern about the gallery's viability at an early stage, before its financial situation gets worse. With early warnings about the gallery's solvency, you might be able to take appropriate measures for the protection of your interests as soon as possible, for example by collecting your consigned artworks from the gallery.

Auction Houses

If works are being sold or resold through an auction house, the PPS rules do not apply.

Sold Artworks Not Yet Paid For

There is another form of protection in the circumstance where an artist's work may have been sold prior to the gallery's insolvency but who has not been paid.

The 'retention of title clause' is a clause that can be written into an agreement between the owner of an artwork (in this case the artist) and a gallery where the ownership of the works is specifically stated to remain with the seller until he/ she is paid. This would enable the artist to recover the proceeds if the works have been sold but the artist not yet paid on the gallery's insolvency. However, this agreement clause would need to be registered on the Personal Property

Securities Act Register to be enforceable.

*A gallery is insolvent when its liabilities exceed its assets with the result that it cannot pay its debts as and when they become due and payable. In plain text: the gallery does not have enough cash to completely pay all its creditors and the business has to close down.