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 ATTORNEY AT LAW

# ART CONTRACTS


## - An Overview -

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# DISCLAIMER!

- This may be boring
- You may not learn anything
- If you learn something, it'll probably be enough to make you dangerous
- This is **NOT** legal advice

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# CONTRACTS

- **DEFINITION:**
  - An **agreement** between **two or more persons** which **creates an obligation to do or *not* to do** a particular **thing**.


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# CONTRACTS...

- **ELEMENTS:**
  - **Parties** (who)
  - **Offer & Acceptance** (subject matter)
  - **Consideration** (value exchange)
  - **Mutual Agreement** (understanding)
  - **Performance** (who does what)

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# CONTRACTS...


- **DO:**
  - Get it in **Writing**
  - Get it in **Advance**
  - **Review** Contract before Signing
  - Seek Professional **Advice**

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# CONTRACTS...


- **DO NOT:**
  - Rely on a **form** blindly
  - Be an **uneducated** draftsman
  - Be too **cheap** to seek help
  - **Sign if you do not understand!**


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**CONTRACT PROVISIONS**


- Basic Elements
- Other Terms and Conditions


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**CONTRACT PROVISIONS**


- **REPRESENTATION**
  - **Statement of fact** made to induce another to enter into a contract


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**PROVISIONS...**


- **WARRANTY**
  - **Promise** that a certain fact or state of facts, in relation to the subject matter, is, or shall be, **as it is represented** to be


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**PROVISIONS...**


- **INDEMNIFICATION**
  - To **secure against loss or damage**, in whole or in part, by payment, repair, or replacement


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**PROVISIONS...**

- **ASSIGNMENT**
  - A **transfer** by a party of **all** of its **rights** to intangible property, such as rights in an agreement



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**PROVISIONS...**

- **DELEGATION**
  - A **transfer** of **power, authority or responsibility** from one person to another


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## PROVISIONS...

- **SUCCESSORS & ASSIGNS**
  - **Successor:** one who *follows* another in ownership or control of property
  - **Assign:** one to whom a *transfer* of property or right is made


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## PROVISIONS...

- **AMENDMENT**
  - To *change, correct or revise* the terms of an agreement


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## PROVISIONS...

- **DISPUTE RESOLUTION**
  - **Litigation**
    - Expressly Stated, or
    - Implied
  - **Mediation**
    - Expressly Stated
    - Non-binding


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## PROVISIONS...

- **DISPUTE RESOLUTION...**
  - **Arbitration**
    - Expressly Stated
    - Advantages
      - Reduced Expense & Time
    - Disadvantages
      - Binding, No Appeal


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## PROVISIONS...

- **Governing Law**
  - Issue Determination
- **Venue**
  - Where
- **Jurisdiction**
  - Court


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## PROVISIONS...

- **ENTIRE AGREEMENT**
  - *Merger* of Negotiations
  - No Other *Documents*
  - No Oral *Discussions*
  - Written Text is *Conclusive*

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**COLORADO STATUTES**

- **CONSIGNMENT OF WORKS OF FINE ART**
- C.R.S. § 6-15-101 through § 6-15-104

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**COLORADO STATUTES...**

- **WORKS**
  - Visual Art
  - Graphic Art
  - Calligraphy
  - Craft work
  - Mixed Media

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**COLORADO STATUTES...**


- Dealer = Artist's Agent
- Work Held in Trust
- Sale Proceeds Held in Trust
- Dealer is Liable for Loss or Damage
  - Damages + \$50
  - Attorney Fees and Costs to Winner

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**ART AGREEMENTS**

- **CONSIGNMENT**
  - With a Gallery
- **EXHIBITION**
  - By a Gallery
- **LOAN**
  - To a Third Party for Exhibit

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**QUESTIONS** 

- **ANSWERS**
  - The Answer to Life, the Universe and Everything is "42"
    - Douglas Adams, *Life, the Universe and Everything* (*Hitchhiker's Guide to the Galaxy* Trilogy)
  - "It Depends"
    - Universal legal answer