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CIVIL CODE - CIV

DIVISION 2. PROPERTY [654 - 1422] (*Heading of Division 2 amended by Stats. 1988, Ch. 160, Sec. 13.*)

PART 3. PERSONAL OR MOVABLE PROPERTY [946 - 998] (*Part 3 enacted 1872.*)

TITLE 2. PARTICULAR KINDS OF PERSONAL PROPERTY [[953.] - 998] (*Title 2 enacted 1872.*)

CHAPTER 3. Products of the Mind [980 - 989] (*Chapter 3 enacted 1872.*)

980. (a) (1) The author of any original work of authorship that is not fixed in any tangible medium of expression has an exclusive ownership in the representation or expression thereof as against all persons except one who originally and independently creates the same or similar work. A work shall be considered not fixed when it is not embodied in a tangible medium of expression or when its embodiment in a tangible medium of expression is not sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration, either directly or with the aid of a machine or device.

(2) The author of an original work of authorship consisting of a sound recording initially fixed prior to February 15, 1972, has an exclusive ownership therein until February 15, 2047, as against all persons except one who independently makes or duplicates another sound recording that does not directly or indirectly recapture the actual sounds fixed in such prior sound recording, but consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate the sounds contained in the prior sound recording.

(b) The inventor or proprietor of any invention or design, with or without delineation, or other graphical representation, has an exclusive ownership therein, and in the representation or expression thereof, which continues so long as the invention or design and the representations or expressions thereof made by him remain in his possession.

(Amended by Stats. 1982, Ch. 574, Sec. 2.)

981. (a) Unless otherwise agreed, an original work of authorship not fixed in any tangible medium of expression and in the creation of which several persons are jointly concerned, is owned by them in equal proportion.

(b) Unless otherwise agreed, an invention or design in the production of which several persons are jointly concerned is owned by them as follows:

(1) If the invention or design is single, in equal proportions.

(2) If it is not single, in proportion to the contribution of each.

(Amended by Stats. 1982, Ch. 574, Sec. 3.)

982. (a) The owner of any rights in any original works of authorship not fixed in any tangible medium of expression may transfer the ownership therein.

(b) The owner of any invention or design, or of any representation or expression thereof, may transfer his or her proprietary interest in it.

(c) Notwithstanding any other provision in this section, whenever a work of fine art is transferred, whether by sale or on commission or otherwise, by or on behalf of the artist who created it, or that artist's heir, legatee, or personal representative, the right of reproduction thereof is reserved to such artist or such heir, legatee, or personal representative until it passes into the public domain by act or operation of law, unless that right is expressly transferred by a document in writing in which reference is made to the specific right of reproduction, signed by the owner of the rights conveyed or that person's duly authorized agent. If the transfer is pursuant to an employment relationship, the right of reproduction is transferred to the employer, unless it is expressly reserved in writing. If the transfer is pursuant to a legacy or inheritance, the right of reproduction is transferred to the legatee or heir, unless it is expressly reserved by will or codicil. Nothing contained herein, however, shall be construed to prohibit the fair use of such work of fine art.

(d) As used in subdivision (c):

(1) "Fine art" means any work of visual art, including but not limited to, a drawing, painting, sculpture, mosaic, or photograph, a work of calligraphy, work of graphic art (including an etching, lithograph, offset print, silk screen, or a work of graphic art of like nature), crafts (including crafts in clay, textile, fiber, wood, metal, plastic, and like materials), or mixed media (including a collage, assemblage, or any combination of the foregoing art media).

(2) "Artist" means the creator of a work of fine art.

(3) "Right of reproduction", at the present state of commerce and technology shall be interpreted as including, but shall not be limited to, the following: reproduction of works of fine art as prints suitable for framing; facsimile casts of sculpture; reproductions used for greeting cards; reproductions in general books and magazines not devoted primarily to art, and in newspapers in other than art or news sections, when such reproductions in books, magazines, and newspapers are used for purposes similar to those of material for which the publishers customarily pay; art films; television, except from stations operated for educational purposes, or on programs for educational purposes from all stations; and reproductions used in any form of advertising, including magazines, calendars, newspapers, posters, billboards, films or television.

(e) The amendments to this section made at the 1975–76 Regular Session shall only apply to transfers made on or after January 1, 1976.

(Amended by Stats. 1982, Ch. 574, Sec. 4.)

983. If the owner of any invention or design intentionally makes it public, a copy or reproduction may be made public by any person, without responsibility to the owner, so far as the law of this state is concerned.

(Amended by Stats. 1982, Ch. 574, Sec. 5.)

984. If the owner of an invention or design does not make it public, any other person subsequently and originally producing the same thing has the same right therein as the prior inventor, which is exclusive to the same extent against all persons except the prior inventor, or those claiming under him.

(Added by Stats. 1949, Ch. 921.)

985. Letters and other private communications in writing belong to the person to whom they are addressed and delivered; but they cannot be published against the will of the writer, except by authority of law.

(Enacted 1872.)

986. (a) Whenever a work of fine art is sold and the seller resides in California or the sale takes place in California, the seller or the seller's agent shall pay to the artist of such work of fine art or to such artist's agent 5 percent of the amount of such sale. The right of the artist to receive an amount equal to 5 percent of the amount of such sale may be waived only by a contract in writing providing for an amount in excess of 5 percent of the amount of such sale. An artist may assign the right to collect the royalty payment provided by this section to another individual or entity. However, the assignment shall not have the effect of creating a waiver prohibited by this subdivision.

(1) When a work of fine art is sold at an auction or by a gallery, dealer, broker, museum, or other person acting as the agent for the seller the agent shall withhold 5 percent of the amount of the sale, locate the artist and pay the artist.

(2) If the seller or agent is unable to locate and pay the artist within 90 days, an amount equal to 5 percent of the amount of the sale shall be transferred to the Arts Council.

(3) If a seller or the seller's agent fails to pay an artist the amount equal to 5 percent of the sale of a work of fine art by the artist or fails to transfer such amount to the Arts Council, the artist may bring an action for damages within three years after the date of sale or one year after the discovery of the sale, whichever is longer. The prevailing party in any action brought under this paragraph shall be entitled to reasonable attorney fees, in an amount as determined by the court.

(4) Moneys received by the council pursuant to this section shall be deposited in an account in the Special Deposit Fund in the State Treasury.

(5) The Arts Council shall attempt to locate any artist for whom money is received pursuant to this section. If the council is unable to locate the artist and the artist does not file a written claim for the money received by the council within seven years of the date of sale of the work of fine art, the right of the artist terminates and such money shall be transferred to the council for use in acquiring fine art pursuant to the Art in Public Buildings program set forth in Chapter 2.1 (commencing with Section 15813) of Part 10b of Division 3 of Title 2, of the Government Code.

(6) Any amounts of money held by any seller or agent for the payment of artists pursuant to this section shall be exempt from enforcement of a money judgment by the creditors of the seller or agent.

(7) Upon the death of an artist, the rights and duties created under this section shall inure to his or her heirs, legatees, or personal representative, until the 20th anniversary of the death of the artist. The provisions of this paragraph shall be applicable only with respect to an artist who dies after January 1, 1983.

(b) Subdivision (a) shall not apply to any of the following:

(1) To the initial sale of a work of fine art where legal title to such work at the time of such initial sale is vested in the artist thereof.

(2) To the resale of a work of fine art for a gross sales price of less than one thousand dollars (\$1,000).

(3) Except as provided in paragraph (7) of subdivision (a), to a resale after the death of such artist.

(4) To the resale of the work of fine art for a gross sales price less than the purchase price paid by the seller.

(5) To a transfer of a work of fine art which is exchanged for one or more works of fine art or for a combination of cash, other property, and one or more works of fine art where the fair market value of the property exchanged is less than one thousand dollars (\$1,000).

(6) To the resale of a work of fine art by an art dealer to a purchaser within 10 years of the initial sale of the work of fine art by the artist to an art dealer, provided all intervening resales are between art dealers.

(7) To a sale of a work of stained glass artistry where the work has been permanently attached to real property and is sold as part of the sale of the real property to which it is attached.

(c) For purposes of this section, the following terms have the following meanings:

(1) "Artist" means the person who creates a work of fine art and who, at the time of resale, is a citizen of the United States, or a resident of the state who has resided in the state for a minimum of two years .

(2) "Fine art" means an original painting, sculpture, or drawing, or an original work of art in glass.

(3) "Art dealer" means a person who is actively and principally engaged in or conducting the business of selling works of fine art for which business such person validly holds a sales tax permit.

(d) This section shall become operative on January 1, 1977, and shall apply to works of fine art created before and after its operative date.

(e) If any provision of this section or the application thereof to any person or circumstance is held invalid for any reason, such invalidity shall not affect any other provisions or applications of this section which can be effected, without the invalid provision or application, and to this end the provisions of this section are severable.

(f) The amendments to this section enacted during the 1981–82 Regular Session of the Legislature shall apply to transfers of works of fine art, when created before or after January 1, 1983, that occur on or after that date.

(Amended by Stats. 1982, Ch. 1609, Sec. 1.5.)

987. (a) The Legislature hereby finds and declares that the physical alteration or destruction of fine art, which is an expression of the artist's personality, is detrimental to the artist's reputation, and artists therefore have an interest in protecting their works of fine art against any alteration or destruction; and that there is also a public interest in preserving the integrity of cultural and artistic creations.

(b) As used in this section:

(1) "Artist" means the individual or individuals who create a work of fine art.

(2) "Fine art" means an original painting, sculpture, or drawing, or an original work of art in glass, of recognized quality, but shall not include work prepared under contract for commercial use by its purchaser.

(3) "Person" means an individual, partnership, corporation, limited liability company, association or other group, however organized.

(4) "Frame" means to prepare, or cause to be prepared, a work of fine art for display in a manner customarily considered to be appropriate for a work of fine art in the particular medium.

(5) "Restore" means to return, or cause to be returned, a deteriorated or damaged work of fine art as nearly as is feasible to its original state or condition, in accordance with prevailing standards.

(6) "Conserve" means to preserve, or cause to be preserved, a work of fine art by retarding or preventing deterioration or damage through appropriate treatment in accordance with prevailing standards in order to maintain the structural integrity to the fullest extent possible in an unchanging state.

(7) "Commercial use" means fine art created under a work-for-hire arrangement for use in advertising, magazines, newspapers, or other print and electronic media.

(c) (1) No person, except an artist who owns and possesses a work of fine art which the artist has created, shall intentionally commit, or authorize the intentional commission of, any physical defacement, mutilation, alteration, or destruction of a work of fine art.

(2) In addition to the prohibitions contained in paragraph (1), no person who frames, conserves, or restores a work of fine art shall commit, or authorize the commission of, any physical defacement, mutilation, alteration, or destruction of a work of fine art by any act constituting gross negligence. For purposes of this section, the term "gross negligence" shall mean the exercise of so slight a degree of care as to justify the belief that there was an indifference to the particular work of fine art.

(d) The artist shall retain at all times the right to claim authorship, or, for a just and valid reason, to disclaim authorship of his or her work of fine art.

(e) To effectuate the rights created by this section, the artist may commence an action to recover or obtain any of the following:

(1) Injunctive relief.

(2) Actual damages.

(3) Punitive damages. In the event that punitive damages are awarded, the court shall, in its discretion, select an organization or organizations engaged in charitable or educational activities involving the fine arts in California to receive any punitive damages.

(4) Reasonable attorneys' and expert witness fees.

(5) Any other relief which the court deems proper.

(f) In determining whether a work of fine art is of recognized quality, the trier of fact shall rely on the opinions of artists, art dealers, collectors of fine art, curators of art museums, and other persons involved with the creation or marketing of fine art.

(g) The rights and duties created under this section:

(1) Shall, with respect to the artist, or if any artist is deceased, his or her heir, beneficiary, devisee, or personal representative, exist until the 50th anniversary of the death of the artist.

(2) Shall exist in addition to any other rights and duties which may now or in the future be applicable.

(3) Except as provided in paragraph (1) of subdivision (h), may not be waived except by an instrument in writing expressly so providing which is signed by the artist.

(h) (1) If a work of fine art cannot be removed from a building without substantial physical defacement, mutilation, alteration, or destruction of the work, the rights and duties created under this section, unless expressly reserved by an instrument in writing signed by the owner of the building, containing a legal description of the property and properly recorded, shall be deemed waived. The instrument, if properly recorded, shall be binding on subsequent owners of the building.

(2) If the owner of a building wishes to remove a work of fine art which is a part of the building but which can be removed from the building without substantial harm to the fine art, and in the course of or after removal, the owner intends to cause or allow the fine art to suffer physical defacement, mutilation, alteration, or destruction, the rights and duties created under this section shall apply unless the owner has diligently attempted without success to notify the artist, or, if the artist is deceased, his or her heir, beneficiary, devisee, or personal representative, in writing of his or her intended action affecting the work of fine art, or unless he or she did provide notice and that person failed within 90 days either to remove the work or to pay for its removal. If the work is removed at the expense of the artist, his or her heir, beneficiary, devisee, or personal representative, title to the fine art shall pass to that person.

(3) If a work of fine art can be removed from a building scheduled for demolition without substantial physical defacement, mutilation, alteration, or destruction of the work, and the owner of the building has notified the owner of the work of fine art of the scheduled demolition or the owner of the building is the owner of the work of fine art, and the owner of the work of fine art elects not to remove the work of fine art, the rights and duties created under this section shall apply, unless the owner of the building has diligently attempted without success to notify the artist, or, if the artist is deceased, his or her heir, beneficiary, devisee, or personal representative, in writing of the intended action affecting the work of fine art, or unless he or she did provide notice and that person

failed within 90 days either to remove the work or to pay for its removal. If the work is removed at the expense of the artist, his or her heir, beneficiary, devisee, or personal representative, title to the fine art shall pass to that person.

(4) Nothing in this subdivision shall affect the rights of authorship created in subdivision (d) of this section.

(i) No action may be maintained to enforce any liability under this section unless brought within three years of the act complained of or one year after discovery of the act, whichever is longer.

(j) This section shall become operative on January 1, 1980, and shall apply to claims based on proscribed acts occurring on or after that date to works of fine art whenever created.

(k) If any provision of this section or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect any other provisions or applications of this section which can be effected without the invalid provision or application, and to this end the provisions of this section are severable.

(Amended by Stats. 1994, Ch. 1010, Sec. 30. Effective January 1, 1995.)

988. (a) For the purpose of this section:

(1) The term "artist" means the creator of a work of art.

(2) The term "work of art" means any work of visual or graphic art of any media including, but not limited to, a painting, print, drawing, sculpture, craft, photograph, or film.

(b) Whenever an exclusive or nonexclusive conveyance of any right to reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art is made by or on behalf of the artist who created it or the owner at the time of the conveyance, ownership of the physical work of art shall remain with and be reserved to the artist or owner, as the case may be, unless such right of ownership is expressly transferred by an instrument, note, memorandum, or other writing, signed by the artist, the owner, or their duly authorized agent.

(c) Whenever an exclusive or nonexclusive conveyance of any right to reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art is made by or on behalf of the artist who created it or the owner at the time of the conveyance, any ambiguity with respect to the nature or extent of the rights conveyed shall be resolved in favor of the reservation of rights by the artist or owner, unless in any given case the federal copyright law provides to the contrary.

(Added by Stats. 1982, Ch. 1319, Sec. 1.)

989. (a) The Legislature hereby finds and declares that there is a public interest in preserving the integrity of cultural and artistic creations.

(b) As used in this section:

(1) "Fine art" means an original painting, sculpture, or drawing, or an original work of art in glass, of recognized quality, and of substantial public interest.

(2) "Organization" means a public or private not-for-profit entity or association, in existence at least three years at the time an action is filed pursuant to this section, a major purpose of which is to stage, display, or otherwise present works of art to the public or to promote the interests of the arts or artists.

(3) "Cost of removal" includes reasonable costs, if any, for the repair of damage to the real property caused by the removal of the work of fine art.

(c) An organization acting in the public interest may commence an action for injunctive relief to preserve or restore the integrity of a work of fine art from acts prohibited by subdivision (c) of Section 987.

(d) In determining whether a work of fine art is of recognized quality and of substantial public interest the trier of fact shall rely on the opinions of those described in subdivision (f) of Section 987.

(e) (1) If a work of fine art cannot be removed from real property without substantial physical defacement, mutilation, alteration, or destruction of such work, no action to preserve the integrity of the work of fine art may be brought under this section. However, if an organization offers some evidence giving rise to a reasonable likelihood that a work of art can be removed from the real property without substantial physical defacement, mutilation, alteration, or destruction of the work, and is prepared to pay the cost of removal of the work, it may bring a legal action for a determination of this issue. In that action the organization shall be entitled to injunctive relief to preserve the integrity of the work of fine art, but shall also have the burden of proof. The action shall commence within 30 days after filing. No action may be brought under this paragraph if the organization's interest in preserving the work of art is in conflict with an instrument described in paragraph (1) of subdivision (h) of Section 987.

(2) If the owner of the real property wishes to remove a work of fine art which is part of the real property, but which can be removed from the real property without substantial harm to such fine art, and in the course of or after removal, the owner intends to cause or allow the fine art to suffer physical defacement, mutilation, alteration, or destruction the owner shall do the following:

(A) If the artist or artist's heir, legatee, or personal representative fails to take action to remove the work of fine art after the notice provided by paragraph (2) of subdivision (h) of Section 987, the owner shall provide 30 days' notice of his or her intended action affecting the work of art. The written notice shall be a display advertisement in a newspaper of general circulation in the area where the fine art is located. The notice required by this paragraph may run concurrently with the notice required by subdivision (h) of Section 987.

(i) If within the 30-day period an organization agrees to remove the work of fine art and pay the cost of removal of the work, the payment and removal shall occur within 90 days of the first day of the 30-day notice.

(ii) If the work is removed at the expense of an organization, title to the fine art shall pass to that organization.

(B) If an organization does not agree to remove the work of fine art within the 30-day period or fails to remove and pay the cost of removal of the work of fine art within the 90-day period the owner may take the intended action affecting the work of fine art.

(f) To effectuate the rights created by this section, the court may do the following:

(1) Award reasonable attorney's and expert witness fees to the prevailing party, in an amount as determined by the court.

(2) Require the organization to post a bond in a reasonable amount as determined by the court.

(g) No action may be maintained under this section unless brought within three years of the act complained of or one year after discovery of such act, whichever is longer.

(h) This section shall become operative on January 1, 1983, and shall apply to claims based on acts occurring on or after that date to works of fine art, whenever created.

(i) If any provision of this section or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(Added by Stats. 1982, Ch. 1517, Sec. 4.)