Lawyer advises artists on their legal rights

By CARMINA BROOKS

Attorneys lectured and artists listened at a recent day-long seminar for visual and performing artists the Birmingham Bloomfield Art Association.

At the end of a fact-filled day, dilemmas often confronted by artists were eased by advice and counsel.

Arthur J. Rubiner, one of Michigan's foremost art attorneys, spoke to artists about contracts.

"Artists should know when they have problems, but are not expected to know how to solve them. As you get into the area of commerce, you are entering into a legal area.

"What we are trying to do is outguess all eventualities — which is 90 percent of what a lawyer is for."

Do artists have a right to work in their homes and apartments? Homes are regulated by zoning that says you can only do certain things. Deeds and leases have legal restrictions.

Business may not occur where you live. Someone may blow a whistle on you, and you may have to appear in district court. If renting, you may get evicted, Rubiner said.

If you are a sculptor working with a blow torch and combustible materials, you have a problem. If you are selling metal fabric in a store, there are operational problems.

If there is a school in the area, you have real problems. If you ply your trade on the streets, most cities require a license.

An inspector may call on you and he can regulate the manner in which you do your work — require fire extinguishers, off-street parking, licensing, safety and health regulations. Double and triple damages can be incurred if someone should get hurt, he said.

"This is not a parade of lawyer's horrors. It really happens."

RUBINER SUGGESTED a short printed contract for all sales. A bill of sale should carry name, address, description of art, amount of dollars, and copyright information. This establishes that the artist created and didn't copy or steal the art.

A contract looks professional and is comforting to people who don't usually deal with artists, Rubiner said. Both the buyer and seller should sign all contracts.

"Once you deliver to the customer, it is his, whether he pays you or not. You can not retrieve.

"All you have is a bare legal right to get your money because you have no security — nothing to hold like a pawnbroker has. You can only sue in small claims court."

Rubiner described a procedure of serving the buyer with a summons to get a judgment that the customer owes the artist.

"You take the sheriff by the hand and beg him to seize it, sell it, take his costs for services, and give you the rest. This is harder to do even than I have described.

"If the customer says, 'I'll pay you next week,' answer, 'I can't stand the risk. Borrow from your neighborly loan company. He is in the business. I am a painter.'"

As artist become more sophisticated and deal with galleries, more things should be added to the contract, he advised. If the customer wants to pay $500 with $100 down and the balance in equal monthly payments, know who you are dealing with.

"Is it Sam or Nelson Rockefeller? Sam may not have the money."

ARTISTS SHOULD have security like a chattel mortgage printed in conspicuous type in the contract. This would say the customer is granting the artist security interest on the sale.

There is also a uniform commercial code (financing statement), which can be bought at any office supply store. Both parties should sign all five copies of it.

This should be mailed to Lansing, then you have a lien on the art, a procedure by which you can sieze your art or foreclose, or have a public auction, he said. Also write on the back of the artwork that this is a security interest of the artist.

"Cumbersome, but you can get the art back. It is hardly ever done and people lose their paintings and sculptures."

"Galleries go out of business regularly. You think that if you have art placed on consignment, it is still yours. Well, it isn't.

"The anguish of the artist is not to be believed because they have no conception. You have no rights from the day when you delivered your child and it was sold." The audience gasped.

Deal with a gallery known to deal with the work of others and spell out the details on paper, he advised. Is it a trade or bought on installment?

If commissioned, spell out everything, he said, the type of paper, number of colors, general substance of a painting, and try to deal with the customer's satisfaction.

Rubiner said the customer may ask: "Can I refuse it? Or say "Don't change styles or get lazy on me."

Add a statement like ". . . one of the best works of which you are capable and in the same manner you have done other work" or "style shall be done in the syle of work hertofore."

He said that if the customer should not like the art when completed, add that he may pay the cost of the materials. If the customer resists and asks "Don't you trust me?" you say, "Absolutely, but if you get hit by a truck when you leave me, I don't know your executor, and I may not trust your executor."

Advances should be spelled out. How many paintings does it take to use up an advance? What happens if you or the customer dies or goes out of business? An artist should be able to sell with a non-refundable advance, he said.

ART CAN DISAPPPEAR from very reputable places, Rubiner said. If it is damaged, what happens? Spell out that art should be insured, kept securely and when the sale will become final.

Include in a contract expenses for work and transportation. If a huge piece is commissioned, it may take an army to move, he said.

Is the gallery an agent or a principal? If the gallery is getting the art, you should be paid immediately. If the gallery is getting a commission, the gallery pays you if it sells the art.

"You will share in the profit, but not his loss."

In your agreement, know how the art will be displayed, taken care of and what will be the security arrangements. He cited a recent case when 12 pieces of gold jewelry were stolen, and the gallery owner was underinsured.

A market value of $1,000 was hypothetical, because it is not established until the items are sold. And this is the a inconsistency, he said.

Ask the gallery owner, "What do we do about insurance?" If he puts you on his policy, you must be able to see the policy. "He may forget to do it."

He listed other considerations: Know if you are going to give all your paintings, the price range, the time frame, exclusivity. Who takes photos for brochures? Who takes risk of credit of customers? (The gallery may sell to a dead beat who doesn't pay.)

If the artist takes the risk, then the artist has the right to pass on the credit of a customer.

Who determines pricing? You may not care, he told the artists, but spell it out anyway. The gallery might price it and devalue your other work.

If you must give all your paintings to the gallery or the commissioner, what about the work you haven't created yet?

If dealing with prints, what rights does the artist have to the prints. Rubiner said the artist should have rights to the proofs, rights to the first few produced and a copyright to sell.

If you are dealing with the plate (stone), who controls the number of prints? How do you know if the plate is destroyed?

Price is determined on the edition, and artists should keep control over the stone or he may find someone else has run 1,500 prints, Rubiner said.

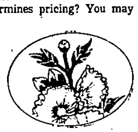
If someone else is touching on your work, you must have artistic and financial control, he added. Artists should control right of reproduction if it can be used on paper napkins, a table cloth or whatever.

What happens to the models of a sculpture in studio sales? They are often beautiful and valuable. Who owns them and who bears the price of erecting the scuplture? All this can be negotiated, said Rubiner.

Artists can write a mortgage by contract sales with the purpose of his lien to come ahead of other creditors in bankruptcy when you can't even see your own work. Give notice to the world that "you have to be careful with my art," Rubiner advised.

Artists with problems can contact the State Bar of Michigan's section on the arts in Lansing or the Michigan Council for the Arts, which sponsored the Saturday seminar.

Next: Grant applications, taxes, copyright, and business organization for the artist



Classical guitarist gives local concert

The Michigan Classical Guitar Society is sponsoring a concert by Scott Tennant, 18-year-old classical guitarist at Cranbrook Auditorium, 8:30 p.m. June 6. The young musician is a protege of Joe Fava, professor of guitar and director of guitar studies at Wayne State University.

Scott began studying country western guitar at age six. At 10, he started classical guitar studies with Lee Dyament and Joe Lo Duca. Several years later, he began studying with Fava.

He has been a featured performer for the past six years beginning with recitals in Detroit. He performed at the Greek festivals on Detroit's riverfront in 1974 and 1974 and the Latin American festivals there for the past four years. He was a soloist twice at the Sahara Hotel in Las Vegas with the Rhodians, a Greek band from Detroit. He has also given concerts in Dallas and Notre Dame University and performed in master classes with Oscar Ghiglia, Alirio Diaz, Evanglos and Lisa, Michael Lorimer, Jon Harris and Manuel Lopez Ramos.

Scott spent three summers with Pepe Romero and has been studying Flamenco guitar under Juan Serrano.

Tickets will be available at the door, $5 general admission, $3 society members and students with ID. The auditorium is at 500 Lone Pine, Bloomfield Hills.

Center plans market

The Farmington Community Center is planning a farmers market from 9 a.m. to noon on Saturdays from Aug. 2 through Oct. 25 on its grounds at 24705 Farmington Road north of 10 Mile.

Growers who sell such items as locally grown fruits, vegetables, herbs, honey products, eggs, flowers, plants, nursery stock, homemade baked goods, arts and crafts are eligible for the market.

Space will be rented to growers for a seasonal fee of $80, a monthly rate ranging from $26 to $32 or a daily fee of $7.

For further information call the center's director, Betty Paine at 477-8404