Multiple Intelligence

When selling prints, disclose or face the consequences

By Charles and Thomas Danziger

COUNTLESS (OKAY, THREE) clients have asked our help in deciphering the numerous disclosure requirements for selling prints and photographs produced in multiples, a market that has grown exponentially of late.

Quincy, for instance, was a bicoastal dealer with galleries in Los Angeles and SoHo. He was on the verge of selling some etchings and asked our advice in complying with the California and New York disclosure statutes. Based on his questions, it didn't take an Einstein to figure out not only that Quincy wasn't complying with these laws, but that his knowledge of them was practically nil.

We began by zeroing in on the California Sale of Fine Prints Act of 1970, the first law of its kind in the U.S. The statute was intended to protect consumers from abuses in the print market, where unsuspecting buyers might, for instance, mistake a monoprint for a monotype. It prohibits art dealers from selling or consigning a multiple "into or from this state unless a certificate of authenticity is furnished to the purchaser or consignee, at his or her request," and mandates that the certificate disclose certain information, such as the size of the edition.

"So if the purchaser doesn't specifically request a certificate," asked Quincy, "I don't have to provide one, right?"

Wrong. The law makes clear that, in any event, a certificate must be provided prior to a sale or consignment. If the purchaser pays for the print prior to delivery of the work, the certificate must be provided no later than the time of delivery.

"If I just need to give a buyer a simple certificate of authenticity," Quincy observed, "compliance is no big deal."

Some facts have been altered for reasons of client confidentiality or, in some cases, created out of whole cloth. Nothing in this article is intended to provide specific legal advice.

Wrong again. The certificate is only one of the requirements. Sellers in California must also include in any catalogue, advertisement, or other written material detailed information on the multiple, including (among other items) the artist's identity, whether or not the artist signed the multiple, the medium used to create it, when it was produced, and—if it is from a limited edition—the exact number of multiples in the edition. At the buyer's request, this information must be provided prior to payment or the placing of an order for the multiple. If payment is sent to the dealer before the work is delivered, the dealer must provide the information at the time of, or prior to, delivery. The buyer may be entitled to a full refund of the purchase price "for reasons related to matter contained in such information" if he returns the multiple within 30 days of receipt.

The corresponding law in New York, titled "Full Disclosure in the Sale of Certain Visual Art Objects Produced in Multiples," was passed in 1982 and is closely modeled on the California statute. It, too, requires dealers to make various written disclosures about each multiple sold. Moreover, in order to comply with both laws, print dealers must do some math, since different disclosure requirements apply depending on when the multiple was created. The two states divide the date of creation into four distinct time periods. In the case of California, these are: before 1900, from 1900 to 1949, from 1950 to 1982, and on or after January 1, 1983. New York's dates are roughly similar. The more recent the time period, the more disclosure required.

"If they wanted dealers to comply, they should have simplified the laws," Quincy griped. "It hardly seems worth the effort for a cheap little litho." We had good news for him: Prints sold for $100 or less are exempt from *(continued on page 128)*

PORTRAIT BY KEZIBAN BARRY

06 AA_Brothers.indd 79 5/1/12 5:18:32 PM

Brothers in Law

(continued from page 79) both the California and the New York disclosure statutes.

Quincy furrowed his brow. "Isn't the artist who made the prints—or the person who consigned them to me—responsible for mistakes in the information he provides?"

The answer is: It depends on your time zone. California does hold the seller liable for incorrect or false disclosure regarding multiples. Under that law, dealers (but not artists) are held to a standard of "strict liability" for any mistakes in the certificate of authenticity and violations of the law, which means that ignorance is no excuse. New York does not have the same requirement.

"That's totally unfair!" exclaimed Quincy. "How do I, as a dealer, know the artist isn't scamming me with bogus edition numbers?"

Apparently, the New York legislature wondered the same thing. In striking contrast to the California statute, an artist who sells or consigns a multiple of his own creation in New York will be viewed as a merchant, and will therefore incur the same liability as a dealer for any misrepresentation. Furthermore, under the New York law, if the dealer can show that his liability arises from faulty information given in writing by the consignor, artist, or merchant, he can seek damages.

"Can I avoid liability under the disclosure laws by making some sort of disclaimer?" our client asked.

The answer is yes in California, but possibly not in New York. The latter's law states that if the dealer makes disclaimers about information required to be disclosed, he will be absolved of liability only if he made "reasonable inquiries, according to the custom and usage of the trade" to ascertain the correct information.

For an aggrieved collector to seek relief under the laws, he must first return the problematic print to the seller (which may tempt an unscrupulous dealer to resell the work to another buyer). Second, in California the purchaser can seek civil remedies, such as rescission, interest, lawsuit costs, reasonable attorneys' fees, expert witness fees, treble damages for willful noncompliance, civil penalties of $1,000 per violation with a possible civil penalty surcharge of $1,000, and injunctive relief. Neither California nor New York imposes criminal fines or imprisonment, so the risk to dealers is probably slight. In New York the civil penalties are limited to $500. Although both states allow their attorneys general to take action, they may only impose civil penalties.

The good news for Quincy is that, to date, disclosure laws have proved so ineffectual that almost no private lawsuits have been brought under their provisions. One often-cited exception was the 1982 California case *Charlene Grogan-Beall v. Ferdinand Roten Galleries, Inc.*, concerning Grogan-Beall's purchase of a number of prints from a California gallery. Except for the numerical indication on the prints, the gallery gave her no information about the history or uniqueness of the works. Two subsequent purchases of prints by her from the same gallery were also problematic: The gallery provided an incomplete certificate of authenticity for one print and only sent the required information on the second print three months after the purchase.

Grogan-Beall initiated a class action on behalf of California print buyers for the gallery's failure to comply with the state's disclosure provisions. The court ordered the gallery to return to her the money paid for the prints, plus interest, but also required that she return the prints in order to recover damages for willful violation of the law. The court denied her request for attorneys' fees and ultimately denied certification for a consumer class action.

Our own view is that although government enforcement in this area has been virtually nonexistent to date, this may change as the prices charged for multiples…multiply. In fact, you can count on it. ⊞

THOMAS AND CHARLES DANZIGER ARE THE LEAD PARTNERS IN THE NEW YORK FIRM DANZIGER, DANZIGER & MURO, SPECIALIZING IN ART LAW.

Gerhard Richter

(continued from page 97) touted sale of six important Richter paintings on May 8 at Christie's New York enjoyed quite a tailwind.

NOT EVERYONE IS PERSUADED by this recent spate of astonishing prices, especially those reached at Sotheby's last November. "I haven't a clue," says the seasoned dealer Roland Augustine, cofounder of Luhring Augustine Gallery in New York, about what he regards as less-than-stellar abstractions. The gallery has sold several major Richter paintings, including the black-and-white photo painting *Woman Descending the Staircase*, 1965, now in the permanent collection of the Art Institute of Chicago, and in 1996 organized an exhibition of 24 photo paintings and abstractions that Augustine characterizes as the first show in New York devoted to Richter on the secondary market. "As much as Lawrence [Luhring] and I both have been involved in the Richter market," continues Augustine, "I don't believe we could sell one of those abstractions for $12 million to $15 million right now if we had one in the gallery. It wouldn't feel conscionable. He's produced hundreds and hundreds of paintings, and his output is formidable. I just can't imagine where these price levels come from." About the group that recently sold at Sotheby's, Augustine says frankly, "I mean, they were hardly A-quality paintings. It looked like a group of paintings put together by a speculator who bought them from here and there and elsewhere."

A speculative motive was certainly evident in the midseason sale at Sotheby's London in February, when Richter's *Abstraktes Bild (825-12)*, 1995, measuring a scant 22 by 20 inches, sold for £959,650 ($1.5 million). The seller, Paris dealer John Sayegh-Belchatowski, literally doubled his investment, having bought the painting just two months earlier at Paul Kasmin's stand at Art Basel Miami for $750,000. The dealer bought a second, similarly scaled Richter from Seoul's Kukje Gallery in Miami for a similar price and resold it in a private transaction in March at a comparable profit. Asked why he sold the paintings so quickly, Sayegh-Belchatowski, a familiar figure on the international auction and art fair circuit, states the obvious: "As you know, the Richter market is strong right now, and there are a lot of collectors who want to have one or some paintings by this major artist in their collection."

Richter's market advance shows no sign of abating. At this year's February evening sale at Christie's London, at least four telephone bidders chased Richter's large *Abstraktes Bild (811-1)*, 1994, a mélange of flickering blues and greens reminiscent of Monet's water lilies. Estimated at £5 million to £7 million ($7.6–11 million), it sold to an American telephone bidder for £9,897,250 ($15.5 million). Outred attributes the competition to "pure collector passion" and a belief that "Richter's market is still undervalued. I think we're very early in the cycle for his market."

Against the backdrop of this fierce trading in paintings by Richter, Marian Goodman says her gallery sets a price standard different from that of the auction houses, adding that she has to be increasingly vigilant about whom she sells work to. "Gerhard and I do the pricing together, and we're certainly not trying to match auction prices. One of the things we have to be careful of is somebody who intends to buy a work, knowing our prices are so very much less than auction prices, as an investment or for speculation. Gerhard himself has said that the auction prices are crazy." Still, Goodman acknowledges, "his auction market is an honest market, and there aren't people joining others to keep it at a certain price range."

Richter's position in the pantheon of postwar art is unassailable in the view of historians and curators, and the desire of collectors appears unquenchable. But Goodman sees an ethical current that runs through the work, an aspect that is being eclipsed by the market furor. She notes with a certain sadness, "Everybody wants to know prices, but that doesn't really have anything to do with the art." Richter's oeuvre, Goodman says, is "so dedicated to the art of painting itself, so ambitious in terms of breadth and depth, that really, painting for him is a moral act." ⊞

06 AA_GerhardRichter.indd 128 5/3/12 2:11:58 PM