



Artist's Resale Right for heirs and beneficiaries

What is the Artist's Resale Right?

The Artist's Resale Right entitles artists to a royalty each time their work is resold by an art market professional.

The Right was introduced in the UK on 14 February 2006, following a European Directive. As of 1 January 2012 sales of works in the UK by deceased artists also qualify for the Right, entitling artists' heirs and beneficiaries to resale royalties.

DACS is the leading organisation administering this Right on behalf of visual artists and their beneficiaries, and we can ensure you receive your royalties from qualifying sales not just in the UK, but also internationally through our network of rights management organisations.

This guide is intended to help you establish who is entitled to Artist's Resale Right royalties after the death of an artist. The guide signposts provisions in the Regulations that could affect your entitlement to receive resale royalties and indicates where to seek clarification and further advice. Whilst we have attempted to make this guide as informative as possible it cannot be seen as a substitute for independent legal advice. Guidance is given under the Artist's Resale Right Regulations currently in force and any changes to the Regulations may have an impact on the following information.

Should you be unclear about any aspect of the Artist's Resale Right please refer to the Artist's

Resale Right Regulations and other relevant documents on our website - www.dacs.org.uk

Establishing your entitlement to Artist's Resale Right royalties in the UK

As the Artist's Resale Right was introduced in 2006 many artists who died prior to 2006 will not have made provisions for this Right in their wills. To deal with this the government introduced transitional provisions to determine the entitlement for resale royalties for all artists who died prior to February 2006. This creates some complexity in determining who inherits

the Artist's Resale Right and the person/estate inheriting the Right may not always be the same person/estate who has inherited the copyright. The transitional provisions do not apply to artists who have died after the introduction of the Artist's Resale Right in February 2006.

Helpful definitions:

Qualifying individual A person who is a national of a country which has an Artist's Resale Right. A list of countries which operate the Right can be found on our website. An individual can have multiple nationalities as long as one is from one of these countries. The artist must have held nationality (citizenship) - permanent residency alone does not qualify.

The nationality of beneficiaries is not relevant.

Successor in title A person who takes over the rights of another i.e. a beneficiary etc.

Qualifying body A charity within the meaning of section 96 (1) of the Charities Act 1993 (a) or section 35 of the Charities Act (Northern Ireland) 1964(b) as amended by the Charities Act 2006; a Scottish charity; a foreign charity.

Residuary beneficiary A person entitled to receive the whole or part of the Residuary Estate i.e. that which is left after all debts, expenses and legacies have been paid.

Determining your entitlement

1. Artist's Resale Right lasts for as long as copyright, which is normally 70 years from the date of death of the artist.
2. The Artist's Resale Right can only be passed on by an artist if they were) a qualifying individual (i.e. a national of a country which operates the Right). Subsequently from the artist, any natural person or a qualifying body can pass on the Right.
3. The Right cannot be assigned by someone while they are alive. The Right can only be transferred upon the death of the artist and thereafter upon the death of the subsequent beneficiaries or between qualifying bodies. If the Artist's Resale Right has been transferred to a qualifying body through inheritance, the qualifying body can then freely transfer the Right to another qualifying body, but not to another natural person.
4. The Right can only be exercised by a natural person or a qualifying body. Any living person can inherit the Right after the artist.

If you are a beneficiary who is two, three or even four times removed from the artist (i.e. you have become a successor in title in the artist's rights from someone other than the artist directly) then all subsequent and pre-deceased successors in title must also have been a natural person or a qualifying body.

What does this mean in practice?

To establish entitlement the following statements must be applicable to you:

- The artist was a national of a country which has an Artist's Resale Right and
 - The Artist's Resale Right was transferred directly from the artist to you or
 - You are not a direct successor in title after the artist but all previous successors in title were either a natural person or a qualifying body.
- or
- The Artist's Resale Right was transferred to a qualifying body and you are intending to claim on behalf of that qualifying body.

This takes you some way to determining your entitlement to resale royalties, however, there are further considerations to take into account. The Artist's Resale Right was introduced in the UK on 14 February 2006 therefore it is very unlikely that the Right would have been accounted for in an artist's will (or any subsequent legal documents in the absence of a will) if they died prior to this date. If the artist died prior to 2006, then there are special transitional provisions in the Regulations setting out the rules for



determining who the Artist's Resale Right has passed to.

It is important to note at this point that the Artist's Resale Right cannot be assigned by someone in their lifetime and can only be transferred upon their death. As copyright can be assigned by someone whilst they are alive it can result in a situation where copyright and the Artist's Resale Right follow different routes. The transitional provisions as shown in the following scenarios allow for this to happen.

If the artist died prior to 2006 there are three scenarios which can be applied to transfers between the artist, and yourself:

Scenario 1

If the artist owned the copyright in a work when they died, then the person who inherited the copyright in that work also inherits the Artist's Resale Right in that work.

Scenario 2

If the artist did not own the copyright in a work, but owned the physical work when they died, then the person who inherited the physical work will inherit the Artist's Resale Right.

Scenario 3

If the artist owned neither the copyright in a work nor the physical work when they died, then the Artist's Resale Right passes to the residual beneficiary.

DACS cannot advise on these transfers and confirm your entitlement, as inheritance law is a specialised area of law handled differently in different countries and territories. Rules may also have changed since the death of the artist, which makes it essential to seek professional advice if you are unclear how the Artist's Resale Right has been passed on since the death of the artist.

The law also contains provisions as to the percentages of Artist's Resale Right in the case of joint works and in cases where Artist's Resale Right is deemed to have been transferred to more than one person at any one time following these provisions. Details can be found in the Artist's Resale Right regulations which can be downloaded from the DACS website.

Information, including flowcharts dealing with the Transitional Provisions, inheritance of copyright, overseas royalties and the application of intestacy rules can be found on our website www.dacs.org.uk

Frequently asked questions

I do not have a copy of the artist's will. What do I do?

DACS cannot advise on any aspects of a person's entitlement to receive resale royalties and cannot advise on wills or other aspects of inheritance law for this purpose. Copies of wills in the UK can be obtained from the London Probate Department.

London Probate Department

PRFD, First Avenue House

42-49 High Holborn

London

WC1V 6NP

Tel: 020 7947 7191

Website: http://www.hmcourts-service.gov.uk/HMCSCourtFinder/Search.do?court_id=365

If you are obtaining a copy of the artist's will, and you did not acquire rights in the artist's works directly from the artist, then you may also need to check any relevant subsequent wills in order to try and establish entitlement.

The artist died intestate.

In cases where no will or no valid will was left, it is advisable that you seek legal advice regarding any possible entitlement. In such situations, the Artist's Resale Right will form part of the intestate estate and will be administered in accordance with the intestacy rules of the country where the artist was domiciled at the time of death.

The artist died outside of England and Wales.

It is important to establish which national law or laws apply to the transfer of the Artist's Resale Right as rules between territories can differ. For example, Scotland has different rules to England and Wales in respect to inheritance. It is also important to note that if the artist was of qualifying nationality but lived in a non-qualifying country at the time of their death, then the Right is transferred following the inheritance rules of the country of last residence.

What if copyright is not mentioned in the artists will?**The will is very complex. What should I do?**

In these cases, it is advisable to seek professional legal advice, ideally from a lawyer specialising in this area. Please see www.dacs.org.uk for a list of law firms that DACS cooperates with. The Law Society's website (<http://www.lawsociety.org.uk/home.law>) may also be able to provide you with contact details for law firms in your area.

There are other beneficiaries as well as myself.

If you are in contact with the other beneficiaries, then you should discuss the Artist's Resale Right with them. Note that the qualifying criteria laid out in this guide will have to be applied to each individual beneficiary.

If you are aware of other beneficiaries, or potential beneficiaries, but do not know of their whereabouts, entitlement etc, then you can still receive resale royalties yourself, providing you are eligible. The executor or the administrator of the will (or of any subsequent wills where relevant), may be able to help you contact any other beneficiaries.

I am not sure what nationality the artist was.

The artist must have been a national of a country which operates the right. If you are unsure of the artist's nationality at the time of their death, you should seek advice. The UK Home Office have information regarding UK nationality on their website and you can also contact them directly.

Phone: 0845 010 5200

Website: <http://www.ukba.homeoffice.gov.uk/>

I am an executor/administrator acting on behalf of beneficiaries.

Depending on the terms outlined in any will (or in the absence of one), it may be that you will have to exercise the Artist's Resale Right for the actual beneficiary/beneficiaries. If you are in doubt as to how to deal with the Right, you should seek legal advice or contact the Probate Office. DACS will require you to provide documentation proving your entitlement and/or the entitlement of the beneficiaries in order to claim resale royalties.

I am a trustee acting on behalf of beneficiaries.

Depending on the terms outlined in any will, it may be that as a trustee you will have to exercise the Artist's Resale Right for the actual beneficiary/beneficiaries. If you are in doubt as to how to deal with the Right, you should seek legal advice or contact the Probate Office. DACS will require you to provide documentation proving your entitlement and/or the entitlement of the beneficiaries in order to claim resale royalties.



We are a registered charity, can we receive resale royalties?

The Artist's Resale Right can be transmitted upon death of the artist to a qualifying body which is defined in Regulation 7 (4) as a charity. If you are in doubt as to whether your charity qualifies, you may wish to consult the Register of Charities, maintained by the Charity Commission.

Website: <http://www.charity-commission.gov.uk/registeredcharities/first.asp>

We are a foundation/trust/company. Can we receive resale royalties?

The Artist's Resale Right can only be transmitted to a foundation/trust/company if both the will provides for this and the foundation/trust/company is established for charitable purposes and qualifies as a qualifying body within the meaning of regulations 9 and 7 as above. Please note that if the foundation/trust/company is outside of the UK, then this may affect entitlement.

What about Inheritance tax?

DACS is not able to comment on any aspects of inheritance tax, though it is advisable to address the issue of inheritance tax at a very early stage in any inheritance procedure.

I have read through this guide and have taken independent advice where necessary and I am satisfied that I am entitled to receive resale royalties. What happens next?

We ask that you register with us in order to allow us to effectively manage the Artist's Resale Right on your behalf.

By registering with DACS, you will also be joining our international network of sister societies, meaning that DACS can collect resale royalties on your behalf which arise from sales taking place overseas.

Finally, by registering, you will be stating that you are legally entitled to receive resale royalties as a beneficiary of the artist and offering DACS both an ongoing warranty and an indemnity to this effect.

Further information

DACS cannot advise on entitlement but if you would like further information please contact the Artist's Services team on 0207 780 7575 or email us at artistservices@dacs.org.uk