

Insurance

Insurance is usually considered by artists to be an unnecessary and unaffordable luxury. This chapter describes some common types of insurance and suggests which ones may be useful to the professional artist.

Although insurance is not in any strict sense a legal matter, it is something that all professional artists should at least consider. What will happen when the studio burns down and both finished works and those in progress are destroyed? When a sculpture is accidentally pushed over and smashed? When the artist is incapacitated by illness, unable to work, and thus unable to obtain an income? When a cartoonist is sued by an irate subject and has to pay thousands of dollars in damages? When a collector trips in the studio, breaks a leg or a neck, and sues for hundreds of thousands of dollars? What is worse, the dislocation that such events can cause to the artist's creative drive is immeasurable.

A. PUBLIC LIABILITY INSURANCE

If a collector comes into the studio, slips on a wet piece of plastic and is severely injured, the artist will end up in a courtroom paying expensive legal fees and potentially enormous damages. It is not uncommon for Australian courts to award over \$1,000,000 to badly injured plaintiffs and the legal fees will usually run to five figures. Where does the average artist get such money? Short of robbing the local paint store it is probable that bankruptcy is at hand. This form of insurance cover is essential and comparatively cheap. The cost of such a policy would be about \$200 and this would include useful extensions to the policy covering goods in bailment, hoists for sculptors and so on. (This is called "broad-form occurrence wording" rather than "accident wording".) However, when buying any form of insurance, always ring and get quotes from a number of insurance companies and brokers as the cost of cover varies enormously. Two million dollars is the recommended minimum cover.

B. INSURANCE OF ARTWORKS

Although most reputable galleries are insured, very few artists bother to protect their own work. Indeed, it used to be very difficult to find a company willing to underwrite such a risk.

Nowadays, insurance companies are beginning to recognise the artist's needs. One such policy covers works in progress and completed works, regardless of where they are (e.g. in the studio, or in transit), against fire, theft, and malicious or accidental damage or loss. There are exclusions to the policy and these should be read carefully (e.g. works are not covered whilst left in an unlocked motor vehicle), but for the most part the exclusions will cause little concern except in the event of atomic war, subterranean fire and other like occurrences. More commonly, the loss is caused by burglars, vandals, or just clumsiness. It can happen in the studio, in transit to the gallery, or in the home of a prospective purchaser who wants to "see what it looks like over the sofa". Note however that if the works are to be covered whilst they are being framed or repaired the owner would have to notify the insurer of this fact and the name and address of the framer/repairer.

The availability and cost of such a policy varies according to a number of factors, such as the condition of the building in which the works are usually kept; the degree of protection provided by the studio's locks and bars; the

occupancy rate of the building, etc. Where the artist is adjudged to be a reasonably good risk the annual premium including usual necessary extensions (e.g. accident, loss, repair, transit, in situ) would be about \$300 per \$10,000.

Most artists are prepared to underwrite their own losses whilst the work is in the studio, cross their fingers whilst the work is in transit to the gallery, and then relax in the oft-times mistaken belief that the gallery carries insurance. Most reputable galleries insure not only their own stock on hand but also stock on consignment (whether in the stockroom or on exhibition) but a number do not.

More often than one cares to imagine, works on exhibition or otherwise consigned for sale are stolen or damaged. When the artist approaches the gallery the corporate veil comes down and the artist is told that the gallery is not responsible or that the insurance company will not pay the claim. The loss must lie where it falls -- at the artist's feet. The truth is that galleries resist making any insurance claims because any claim adversely affects the premium that they have to pay the next year. Artists are not insured by gallery policies; galleries are. Because the contract of insurance is between the gallery and the insurance company, the artist has no legal right to claim against the gallery's insurer. (Note that in Western Australia the artist does have a right to claim against the gallery's insurer direct.) Thus, unless the gallery is prepared to make a claim, or there exists an artist-gallery contract which specifies that the gallery will be responsible for any loss or damage, there is little that the artist can do except perhaps sue the gallery for being a negligent bailee. Few artists would be prepared to do this and few could afford it.

Even then a work is insured by the gallery problems may arise. When Ivan Durrant's painting entitled "The Big Pig's Head" was slashed whilst on exhibition at the National Gallery of Victoria, the insurers adopted an approach which was perhaps suitable to instances of automobile damage, but which was wholly inappropriate to an artwork mutilation. They estimated that the painting could be restored to be half as good as before; accordingly the payout should be half of its insured value!

The artist considered that the damage to the painting was irreparable and sued the insurance company for the full value of the work. Although the case was eventually settled out of court, the attitude of the insurance company from the beginning of the incident demonstrated either a huge ignorance of the aesthetic and professional concerns of the artist or a wilful disregard of such matters. It might also be noted that the gallery did not support the artist as one might have expected it to do. The gallery considered that by insuring the work it had fulfilled its obligations to the artist. Understandably, Durrant holds a different view.

This case contains another important feature. When agreeing to settle the case, the artist was obliged to sign a release which permitted the insurer to repair the work and sell it for whatever it could get. Generally, whenever an insurance company writes off an insured item as irreparably damaged, it takes the salvage (the burnt or torn or sopping remains of the artwork) and may sell it for whatever price can be obtained in an attempt to recoup their loss. This was Mona Hessing's unhappy experience with a badly damaged wall hanging that was written off and then later put up for auction as her artwork. As matters stand, the only options available to artists who wish to avoid this are either to offer to purchase the salvage from the company, or to attend the auction at which it is to be sold.

One of the most difficult problems that artists face when making an insurance claim for lost or damaged works is proving the value of the works. Indeed, sometimes it is impossible to prove even that the works ever existed. The company is not going to accept the artist's word. This means that proper records must be kept; as soon as a work is finished it should be photographed and assigned an inventory number. The basic details should also be

recorded, such as the date completed, the size, the medium, and the tentative selling price. These records should not be stored in the same place as the artworks, for obvious reasons.

Most of these steps are basic to the efficient artist's organisational system and thus necessary proofs should not be onerous.

C. INCOME INSURANCE

Few artists are in a position to afford income insurance, but the concept should at least be acknowledged. If the artist becomes ill or suffers an accident, this cover can provide three-quarters of the insured's annual income. This amount is based on the average income of the last couple of years. The premium is approximately the equivalent of one week's benefit per annum. Most artists should at least take out accident insurance.

D. PROFESSIONAL INSURANCE

The only members of the art world who require this sort of protection are art valuers, conservators, art critics and cartoonists. This policy protects the insured against liabilities incurred in the course of professional life; the error in attribution; the libel written by the critic or drawn by the cartoonist. This can be done as an extension to the public liability policy or by using specific packages such as those that are available for printers and graphic artists. Most visual artists will find such policies of little benefit: aesthetics are difficult to underwrite.

E. VOLUNTEER INSURANCE

Many art organisations and projects involve volunteers. Most art museums make extensive use of volunteers and so do some art practitioners, such as muralists and other community art workers. These people are in a hazardous position for they are not employees and so covered under workers' compensation insurances (see *Dietrich v. Dare* (1980) 54 A.L.J.R. 388) and they are often not covered by ordinary public liability policies (for they are more than mere members of the public). Whether or not they are covered by the public liability policy will depend entirely upon the exact wording of each policy.

There are several examples of organisations negotiating an extension of either their public liability or their workers' compensation cover to include their volunteers. Because a contract of insurance is just another contract, it is negotiable. There is nothing immutable about its terms.

However, some special volunteer policies are available. For example, the Volunteer Centre of New South Wales, the Local Community Services Association and Commercial Union, have negotiated a personal accident insurance for organisations to cover their volunteers. It is cheap and effective. Such a policy is the least that should be done to protect the thousands of volunteers who make their invaluable contributions to the arts.