Chapter 359

2005 EDITION

Art and Culture

ARTS COMMISSION; ARTS PROGRAM

359.010 Definitions for ORS 359.010 to 359.137
359.020 Oregon Arts Commission; members; term; qualifications; vacancy; term limit; officers; quorum; compensation and expenses
359.025 Commission duties; Trust for Cultural Development Account
359.030 Objectives of Arts Program
359.040 Duties of Arts Program
359.050 Powers of Arts Program
359.065 Arts Program established
359.100 Grants and services from public and private sources
359.110 Gifts; Arts Program as custodian
359.120 Arts Trust Account
359.130 Powers not granted or transferred
359.135 Administrator; appointment; salary; duties
359.137 Staff
359.142 Rules

ART TRANSACTIONS

(Consignments)

359.200 Definitions for ORS 359.200 to 359.255
359.205 Delivery of art work to dealer as consignment; exception for direct sale work as trust property
359.210 Effect of treating art work delivery as consignment; name of purchaser to be supplied on demand; remedy
359.215 Consignment does not create rights in art dealer greater than those of artist
359.220 Artist and art dealer to execute consignment contract; contents; consent to display
359.225 Payment of sale proceeds of consigned work; funds due artist not subject to claims of dealer's creditors
359.230 Contract provision waiving protections for artist is void
359.235 ORS 359.200 to 359.240 not to affect prior transactions; effect of Uniform Commercial Code
359.240 Art dealer prohibited from diverting sale proceeds; penalty
359.250 Liability of art dealer for violation of ORS 359.220
359.255 Attorney fees

(Fine Print Disclosure Statements)

359.300 Definitions for ORS 359.300 to 359.315
359.305 Disclosure statements required; disclaimer; exception for reproduction
359.310 Contents of disclosure statement
359.315 Liability for failure to disclose; treble damages

(Art Work Reproduction Rights)

359.350 Definitions for ORS 359.350 to 359.365
359.355 Art work reproduction rights retained by artist unless expressly transferred; effect of federal copyright laws
359.360 Ownership of physical work of art remains with artist unless expressly transferred
359.365 Ambiguity in agreement transferring right to reproduce art work resolved in favor of artist

TRUST FOR CULTURAL DEVELOPMENT

(Generally)

359.400 Definitions for ORS 359.400 to 359.444
359.405 Trust for Cultural Development Account

(Trust for Cultural Development Board)

359.410 Board established; membership; chairperson
359.413 Board quorum; meetings
359.416 Board duties; rules
359.421 Board staff; staff duties

(Disbursement of Trust Account)

359.426 Percentage that may be disbursed; allowable uses
359.431 Cultural Development Grant Program; grant uses; priorities; matching funds
359.436 Community Cultural Participation Grant Program; local cultural plans
359.441 Core partner agencies disbursement
359.444 Allowable uses of funds by core partner agencies

ARTS COMMISSION; ARTS PROGRAM

359.010 Definitions for ORS 359.010 to 359.137. As used in ORS 359.010 to 359.137, unless the context requires otherwise:

(1) "Administrator" means the Administrator of the Arts Program of the Economic and Community Development Department.

(2) "Arts" includes, but is not limited to, instrumental and vocal music; dance, drama, folk art, creative writing and poetry; architecture and landscaping design and the fields allied to them; painting, sculpture, photography; graphic and craft arts; industrial design; costume and fashion design; motion pictures, television, radio; tape and sound recording; the history, criticism, theory and practice of the arts; and the arts related to the presentation, performance, execution and exhibition of such art forms.

(3) "Association" means a nonprofit, private, incorporated or unincorporated institution, foundation, museum, organization, society or group, whether local, state, regional or national, that is operating, or doing business, in Oregon.

(4) "Commission" means the Oregon Arts Commission.

(5) "Department" means the Economic and Community Development Department.

(6) "Director" means the Director of the Economic and Community Development Department.

(7) "Program" means the Arts Program of the Economic and Community Development Department.

(8) "Local agencies" includes cities, counties and other public corporations and their officers, boards and commissions.

(9) "Public agencies" means state agencies and local agencies.

(10) "Private corporation" means a corporation organized for profit and authorized to do business in this state.

(11) "State agencies" includes state officers, departments, boards and commissions. [1967 c.321 §1; 1993 c.209 §5]

359.020 Oregon Arts Commission; members; term; qualifications; vacancy; term limit; officers; quorum; compensation and expenses. (1) The Oregon Arts Commission is created as a policy-making and advisory body within the Economic and Community Development Department. The commission shall consist of nine members appointed by the Governor. The term of a member is four years, and the member shall serve until a successor is appointed and qualifies.

(2) Persons appointed members of the commission shall be citizens of Oregon well qualified by experience to make policy and recommendations in areas of concern to the Arts Program of the Economic and Community Development Department and otherwise to perform the duties of the office.

(3) In case of a vacancy on the commission for any cause, the Governor shall appoint a successor to serve for the unexpired term.

(4) A member of the commission may be appointed to serve two consecutive terms. A member who serves two consecutive terms shall not be eligible for reappointment within one year following the expiration of the second term.

(5) A member of the commission is entitled to compensation and expenses as provided in ORS 292.495.

(6) The commission shall select one of its members to chair the commission for such term and with duties and powers necessary to perform the functions of the office as the commission determines.

(7) A majority of the members of the commission constitutes a quorum for the transaction of business. [1967 c.321 §2; 1969 c.314 §28; 1979 c.729 §1; 1985 c.491 §1; 1993 c.209 §6]

359.025 Commission duties; Trust for Cultural Development Account. (1) The Oregon Arts Commission shall perform the following duties:

(a) Serve as a body to advise governmental bodies and agencies and private persons on the development and implementation of state policies and programs relating to the arts, heritage, historic preservation, humanities and culture, and to assist in the coordination of these activities.

(b) Advise the Governor, the Director of the Economic and Community Development Department and the Oregon Economic and Community Development Commission on all matters relating to the arts that pertain to the powers, duties and functions of the Arts Program of the Economic and Community Development Department.

(c) Develop a recommended biennial budget for the operation of the Arts Program that will be submitted to the director and the Governor.

(d) Seek and receive the views of all levels of government and the private sector with respect to state programs and policies for the promotion and assistance of the arts.

(e) Prepare and submit suggested administrative rules to the director that the Oregon Arts Commission determines are necessary for the operation of the programs of the Arts Program.

(f) Establish policy and procedures for grant programs administered by the Arts Program.

(2)(a) In addition to the duties imposed by subsection (1) of this section, the Oregon Arts Commission shall establish policies and provide management and operational staff support for the Trust for Cultural Development Board.

(b) Notwithstanding paragraph (a) of this subsection, the Trust for Cultural Development Board shall make any decisions relating to the investment and disbursement of moneys in the Trust for Cultural Development Account. [1993 c.209 §7; 1995 c.79 §200; 2003 c.713 §1]

359.030 Objectives of Arts Program. The objectives of the Arts Program of the Economic and Community Development Department are:

(1) To complement, assist and strengthen existing or planned programs and activities of public and private associations in the arts to promote the broadest public benefit, while maintaining high artistic and scholarly standards.

(2) To encourage and give greater opportunities and recognition to individual Oregon artists whose work is, or gives promise of being, of high quality.

(3) To stimulate and encourage private and local initiative and financial support in connection with programs and activities in the arts. [1967 c.321 §7; 1993 c.209 §8]

359.040 Duties of Arts Program. To carry out its objectives the Arts Program of the Economic and Community Development Department shall:

(1) Develop programs and plans:

(a) To encourage broad public participation in, and understanding of, programs in the arts.

(b) To encourage public interest in conserving and understanding the cultural and artistic heritage of the state and of its people.

(c) To encourage increased recognition of the contributions of the arts to the richness of community life and to the development of the individual.

(d) To assist communities within the state in establishing or conserving local cultural, historical and artistic programs.

(e) To stimulate and encourage throughout the state the presentation, enjoyment and study of the arts among the youth and elderly people.

(f) To encourage and facilitate, where feasible, wider circulation throughout the state of noteworthy programs, productions, exhibitions and performances which demonstrate the artistic and cultural resources and accomplishments of the people of Oregon.

(g) To encourage and facilitate, where feasible, programs, productions, exhibitions and performances in Oregon of outstanding works of art and artistic talent in the fields of the arts, which may be brought from outside the state.

(2) Develop, maintain and make available to the public, information concerning:

(a) The cultural and artistic resources and activities within the state.

(b) The organizations and groups conducting, supporting or fostering programs and activities involving the employment, conservation and presentation of such resources.

(3) Advise and assist upon request and within the limits of the funds available:

(a) The Governor and other state officers, public agencies, the legislature, communities of the state and the public concerning the development, housing, presentation and conservation of the artistic and cultural resources within the state.

(b) State agencies concerning the acceptance and disposition of gifts of art to the state.

(4) Develop an honors program in the arts, which includes the means for recognizing distinguished artists and other Oregon citizens whose creative works or effort or whose services of philanthropy on behalf of the arts are such as to merit the official appreciation of the people of Oregon.

(5) Manage the Trust for Cultural Development Account established by ORS 359.405. [1967 c.321 §8; 1993 c.209 §9; 2003 c.713 §2]

359.050 Powers of Arts Program. (1) In performing its duties, the Arts Program of the Economic and Community Development Department, within the limits of available funds, may:

(a) Conduct hearings and conferences to develop facts, to explain programs and activities, and to obtain advice.

(b) Enter into agreements with other public agencies and with associations and individuals for services that will assist the Oregon Arts Commission or the Trust for Cultural Development Board.

(c) Enter into agreements with other public agencies of Oregon or with agencies of other states or the federal government, and with private corporations, associations and individuals in Oregon or other states for cooperative endeavors which further the objectives and programs of the commission.

(d) Make grants to local agencies, to associations or to individuals for the development and conservation of programs in the arts, such grants to be made in accordance with policies and procedures adopted by the commission.

(2) In carrying out the purposes of ORS 359.010 to 359.137, the Arts Program, in addition to the other powers granted:

(a) Shall as needed appoint committees, consultants, artists and other persons expert in subjects of concern to the program to advise and assist the commission.

(b) May obtain from any state agency necessary assistance and data.

(c) May perform other acts necessary to carry out its duties. [1967 c.321 §9; 1993 c.209 §10; 2003 c.713 §3]

359.060 [1967 c.321 §4; repealed by 1993 c.209 §22]

359.065 Arts Program established. (1) The Arts Program is established as an administrative section within the Economic and Community Development Department. The program is subject to the supervision of the Administrator of the Arts Program. The program shall consist of the administrator and all personnel employed in the program.

(2) The program shall provide the Oregon Arts Commission with staff and other assistance as necessary for the commission to perform its duties. [1993 c.209 §1; 1993 c.736 §76]

359.070 [1967 c.321 §5; repealed by 1993 c.209 §22]

359.080 [1967 c.321 §6; repealed by 1993 c.209 §22]

359.090 [1967 c.321 §13; repealed by 1975 c.605 §33]

359.095 [1975 c.53 §4; repealed by 1979 c.729 §3]

359.100 Grants and services from public and private sources. (1) The Arts Program of the Economic and Community Development Department shall prepare and study plans for participation of public agencies and associations in federal government programs for the support and encouragement of the arts.

(2) The program may apply for and accept grants or services from the federal government or any of its agencies, from associations, individuals and private corporations to carry out the purposes of ORS 359.010 to 359.137.

(3) Grants or services from individuals, associations or private corporations shall not be accepted if restricted to a use which would be contrary to the laws of this state. [1967 c.321 §10; 1993 c.209 §11]

359.110 Gifts; Arts Program as custodian. (1) The Arts Program of the Economic and Community Development Department may solicit and accept gifts, bequests or devises of money, securities or other property of whatever character to carry out the purposes of ORS 359.010 to 359.137. A restricted gift, bequest or devise shall not be accepted if such restriction would be contrary to the laws of this state.

(2) The program shall be the custodian of any securities or other property accepted as a gift, bequest or devise. The program shall hold such property as trustee for the state and shall conserve and administer such property to carry out the purposes of ORS 359.010 to 359.137. Except as prohibited by law or restricted by the terms of the gift, bequest or devise, the program may sell or exchange any property accepted as a gift, bequest or devise as it may from time to time determine. The income from such money, securities or other property shall be credited to the Arts Trust Account established by ORS 359.120. [1967 c.321 §11; 1993 c.209 §12]

359.120 Arts Trust Account. There hereby is established an account separate and distinct from the General Fund to be known as the Arts Trust Account. Except for moneys received for the purposes of the Trust for Cultural Development Account, all moneys received by the Arts Program of the Economic and Community Development Department pursuant to ORS 359.100 and 359.110 shall be paid into the State Treasury and credited to the Arts Trust Account. All moneys in the Arts Trust Account are continuously appropriated to the Economic and Community Development Department and shall be used by the program in carrying out the purposes for which the funds were received. [1967 c.321 §12; 1993 c.209 §13; 2003 c.81 §11; 2003 c.713 §4; 2005 c.22 §258]

359.130 Powers not granted or transferred. (1) The Arts Program of the Economic and Community Development Department shall not direct, supervise or control the policy, programs, personnel, curriculum or administration of any public or private agency, school, association or entity having to do with the arts.

(2) Nothing in ORS 359.010 to 359.137 is intended to transfer from any other state agency to the program any duty or power granted by statute to such other state agency prior to July 1, 1967. [1967 c.321 §14; 1993 c.209 §14]

359.135 Administrator; appointment; salary; duties. (1) The Director of the Economic and Community Development Department, upon consultation with and the approval of the Oregon Arts Commission, shall appoint an administrator of the Arts Program who shall serve at the pleasure of the director.

(2) The administrator shall receive such salary as may be provided by law or as fixed by the director.

(3) The administrator shall be the administrative head of the program.

(4) The administrator may suggest rules to the director for the government of the program, the conduct of its employees and the assignment and performance of its business and the custody, use and preservation of its records, papers and property. [1993 c.209 §2]

359.137 Staff. The Arts Program of the Economic and Community Development Department shall employ, in accordance with the State Personnel Relations Law, the staff necessary to allow the program to carry out the provisions of ORS 359.010 to 359.137. [1993 c.209 §3]

359.140 [1981 c.411 §3; 1987 c.758 §3; 1989 c.987 §20; repealed by 1993 c.209 §23]

359.142 Rules. The Director of the Economic and Community Development Department, in accordance with ORS chapter 183, may adopt such rules for the operation of the Arts Program as the director determines necessary or convenient for the program to perform its duties and functions. [1993 c.209 §4]

359.150 [1981 c.411 §4; 1993 c.209 §15; repealed by 1993 c.209 §23]

ART TRANSACTIONS
(Consignments)

359.200 Definitions for ORS 359.200 to 359.255. As used in ORS 359.200 to 359.255:

(1) "Art dealer" means an individual, partnership, firm, association or corporation, other than a public auctioneer, that undertakes to sell a work of fine art created by another.

(2) "Artist" means the creator of a work of fine art or, if the artist is deceased, the artist's personal representative, heirs or legatees.

(3) "Consignee" means an art dealer who receives and accepts a work of fine art from a consignor for the purpose of sale or exhibition, or both, to the public on a commission or fee or other basis of compensation.

(4) "Consignment" means delivery of a work of fine art to an art dealer for the purpose of sale or exhibition, or both, to the public by the art dealer at other than a public auction.

(5) "Consignor" means an artist or any person who delivers a work of fine art to an art dealer for the purpose of sale or exhibition, or both, to the public on a commission or fee or other basis of compensation.

(6) "Fine art" means:

(a) An original work of visual art such as a painting, sculpture, drawing, mosaic or photograph;

(b) A work of calligraphy;

(c) A work of original graphic art such as an etching, lithograph, offset print, silk screen or other work of similar nature;

(d) A craft work in materials including but not limited to clay, textile, fiber, wood, metal, plastic, glass or similar materials; or

(e) A work in mixed media such as a collage or any combination of the art media described in this subsection. [1981 c.410 §1; 1985 c.830 §1]

359.205 Delivery of art work to dealer as consignment; exception for direct sale work as trust property. (1) Notwithstanding any custom, practice or usage of the trade to the contrary, whenever an artist delivers or causes to be delivered a work of the artist's own creation to an art dealer in this state for the purpose of exhibition or sale, or both, on a commission, fee or other basis of compensation, the delivery to and acceptance thereof by the art dealer constitutes a consignment unless the delivery to the art dealer is pursuant to an outright sale for which the artist receives or has received compensation for the work of fine art upon delivery.

(2) A work of fine art is trust property in the hands of the art dealer, who is trustee for the benefit of the artist until the work of fine art is sold to a bona fide third party.

(3) The proceeds of the sale of a work of fine art are trust property in the hands of the art dealer who is trustee for the benefit of the artist until the amount due the artist from the sale is paid. Nothing in this subsection requires a separate trust account for each artist.

(4) A work of fine art that is trust property when initially accepted by the art dealer remains trust property notwithstanding the subsequent purchase of the work of fine art by the art dealer directly or indirectly for the art dealer's own account, until the purchase price is paid in full to the artist.

(5) The trust relationship described in this section imposes no duty greater than the duties described in ORS 359.200 to 359.210, 359.220, 359.225, 359.250 and 359.255 and does not give rise to any general trust or fiduciary relationship. [1981 c.410 §2; 1985 c.830 §2]

359.210 Effect of treating art work delivery as consignment; name of purchaser to be supplied on demand; remedy. (1) A consignment of a work of fine art has the following effect:

(a) The consignee, after the delivery of fine art, shall be considered to be the agent of the consignor for the purpose of the exhibition or sale, or both, of the work of fine art within this state.

(b) The work of fine art, or the artist's portion of the proceeds from the sale of such work, shall not be subject to the claims of a creditor or consignee.

(c) A consignee is liable for the loss of or damage to the work of fine art while it is in the consignee's possession where such loss or damage is caused by the failure of the consignee to use the highest degree of care. For the purpose of this subsection, the value of the work of fine art is the value established in a written agreement between the consignor and consignee prior to the loss or damage or, if no written agreement regarding the value of the work of fine art exists, the artist's portion of the fair market value of the work of fine art.

(d) The consignee shall not be held liable for the loss of, or damage to the work of fine art if the artist fails to remove the work within a period of 30 days following the date agreed upon for removal of the work in the written contract between the artist and the consignee or, if no written agreement regarding a removal date exists, 30 days after notice to remove the work of fine art is sent by registered mail or by certified mail with return receipt to the artist at the artist's last-known address.

(2) Upon written demand from the consignor, the consignee shall furnish the consignor with the name and address of the purchaser of the consignor's work, and the date of purchase and the price paid for the work, for any sale totaling $100 or more.

(3) Failure to furnish the information specified under subsection (2) of this section by the consignor shall entitle the artist to obtain an injunction prohibiting such conduct and in addition, money damages in an amount equal to three times the artist's portion of the retail value of the work. [1981 c.410 §3; 1985 c.830 §3; 1991 c.249 §28]

359.215 Consignment does not create rights in art dealer greater than those of artist. A consignment of a work of fine art does not convey title to or create an estate in the work or grant a right to possession superior to that of the consignor notwithstanding the power or authority of the consignee to transfer or convey to a third person all of the right, title and interest of the consignor in and to the work. [1981 c.410 §4]

359.220 Artist and art dealer to execute consignment contract; contents; consent to display. (1) An art dealer may accept a work of fine art, on a fee, commission or other compensation basis, on consignment from the artist who created the work of fine art only if prior to or at the time of acceptance the art dealer enters into a written contract with the artist establishing:

(a) The retail value of the work of fine art;

(b) The time within which the proceeds of the sale are to be paid to the artist, if the work of fine art is sold;

(c) The minimum price for the sale of the work of fine art; and

(d) The fee, commission or other compensation basis of the art dealer.

(2) An art dealer who accepts a work of fine art on a fee, commission or other compensation basis on consignment from the artist may use or display the work of fine art or a photograph of the work of fine art or permit the use or display of work or photograph only if:

(a) The art dealer gives notice to users or viewers that the work of fine art is the work of the artist; and

(b) The artist gives prior written consent to the particular use or display. [1981 c.410 §5; 1985 c.830 §4]

359.225 Payment of sale proceeds of consigned work; funds due artist not subject to claims of dealer's creditors. The proceeds from a sale of a work of fine art on consignment shall be paid to the consignor within 30 days of receipt by the consignee unless the consignor expressly agrees otherwise in writing. If the sale of the work of fine art is on installment, the funds from the installment shall first be applied to pay any balance due the consignor on the sale, unless the consignor expressly agrees in writing that the proceeds on each installment shall be paid according to the percentage established by the consignment agreement. The artist's portion of funds received on the sale of the work of fine art or on installment shall not be subject to the claims of a creditor of the consignee. [1981 c.410 §6; 1985 c.830 §5]

359.230 Contract provision waiving protections for artist is void. Any provision of a contract or agreement whereby the consignor waives any of the provisions of ORS 359.200 to 359.255 is void. [1981 c.410 §7]

359.235 ORS 359.200 to 359.240 not to affect prior transactions; effect of Uniform Commercial Code. (1) Nothing in ORS 359.200 to 359.255 is intended to affect any written or oral contract or agreement in existence prior to November 1, 1981, unless the parties agree by mutual written consent that ORS 359.200 to 359.255 shall apply or the contract is extended or renewed after November 1, 1981.

(2) ORS 359.200 to 359.255 is applicable notwithstanding the absence of, or conflict with, any written agreement, receipt, note or

memorandum entered into on or after November 1, 1981, between the consignor and the consignee concerning any matter covered by ORS 359.200 to 359.255. ORS 359.200 to 359.255 controls over any conflicting provisions of the Uniform Commercial Code. [1981 c.410 §§8,10]

359.240 Art dealer prohibited from diverting sale proceeds; penalty. It shall be unlawful for a consignee willfully and knowingly to secrete, withhold or appropriate a work of fine art or the proceeds from sale thereof for the consignee's own use or the use of any person other than the consignor, except pursuant to a bona fide sale or as otherwise consistent with the terms of consignment. Violation of this section is a Class C felony. [1981 c.410 §9]

359.250 Liability of art dealer for violation of ORS 359.220. (1) An art dealer violating ORS 359.220 is liable to the artist for $100 plus actual damages, including incidental damages sustained as a result of the violation.

(2) If an art dealer violates ORS 359.220, the artist's obligation for compensation to the art dealer is voidable by the artist. [1985 c.830 §7]

359.255 Attorney fees. In any action under any provision of ORS 359.200 to 359.255, the court may award reasonable attorney fees and costs to the prevailing party. [1985 c.830 §8]

(Fine Print Disclosure Statements)

359.300 Definitions for ORS 359.300 to 359.315. As used in ORS 359.300 to 359.315:

(1) "Artist" means the person who conceived or created or conceived and created the master image for, or which served as a model for, the print.

(2) "Fine print" includes, but is not limited to, an engraving, etching, woodcut, lithograph, monoprint or serigraph.

(3) "Impression" means the printed image on suitable material whether paper or any other substance, made off the plate by printing, stamping, casting or any other process commonly used in the graphic arts.

(4) "Plate" means the plate, stone, block or other material used for the purpose of creating the print from which the impression or impressions were taken.

(5) A fine print is "signed" if the artist autographs the finished print, irrespective of whether it was signed or unsigned in the plate.

(6) "Reproduction" means a copy of a fine print, but not a unique print made from the original plate. [1981 c.726 §1]

359.305 Disclosure statements required; disclaimer; exception for reproduction. (1) No person, engaged in the business of selling fine prints, shall sell a fine print, at wholesale or at retail, unless the person furnishes the purchaser a certificate or a written invoice or receipt for the purchase price which clearly and conspicuously discloses and warrants all of the applicable information about a fine print set forth in ORS 359.310.

(2) If the seller disclaims knowledge as to any applicable item of information set forth in ORS 359.310, the seller shall so state specifically and categorically with regard to each such item.

(3) If the seller describes a fine print as a reproduction, the seller need not furnish any further information. [1981 c.726 §2]

359.310 Contents of disclosure statement. The following information about a fine print shall be furnished as provided in ORS 359.305:

(1) The name of the artist and the year when printed.

(2) Exclusive of trial proofs, whether the edition is being offered as a limited edition, and, if so:

(a) The authorized maximum number of signed or numbered impressions, or both, in the edition;

(b) The authorized maximum number of unsigned or unnumbered impressions, or both, in the edition;

(c) The authorized maximum number of artist's, publisher's, printer's or other proofs, if any, outside of the regular edition; and

(d) The total size of the edition.

(3) Whether the plate has been destroyed, effaced, altered, defaced or canceled after the current edition.

(4) If there were any prior states of the same impression, the total number of states and a designation of the state to which the subject print relates.

(5) If there were any prior or later editions from the same plate, the series number of the subject edition and the total size of all other editions.

(6) Whether the edition is a posthumous edition or restrike and, if so, whether the plate has been reworked.

(7) The name of the workshop, if any, where the edition was printed. [1981 c.726 §3]

359.315 Liability for failure to disclose; treble damages. (1) A person who offers or sells a fine print in violation of ORS 359.300 to 359.315 shall be liable to the person purchasing such fine print. The purchaser may recover the consideration paid for such print,

with interest at the legal rate upon the tender of the print.

(2) In any case in which a person willfully offers or sells a fine print in violation of ORS 359.300 to 359.315, the person purchasing the fine print may recover from the person who offers or sells the fine print an amount equal to three times the amount required under subsection (1) of this section. [1981 c.726 §5]

(Art Work Reproduction Rights)

359.350 Definitions for ORS 359.350 to 359.365. As used in ORS 359.350 to 359.365:

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

(2) "Fine art" means a painting, sculpture, drawing, photograph, craft work, fiber art or work of graphic art.

(3) "Fine print" includes, but is not limited to, an engraving, etching, woodcut, lithograph, monoprint or serigraph, but does not include industrial designs.

(4) "Industrial design" means the aesthetic appearance of an article used in commerce.

(5) "Work of fine art" means any work of visual or graphic art of any media including, but not limited to, painting, fine print, drawing, sculpture, craft, photography or film. [1981 c.824 §1]

359.355 Art work reproduction rights retained by artist unless expressly transferred; effect of federal copyright laws. (1) Whenever a work of fine art is sold or otherwise transferred by or on behalf of the artist who created it, or the heirs or personal representatives thereof, the right of reproduction thereof is reserved to the grantor until the right passes into the public domain pursuant to federal copyright laws unless the right is sooner expressly transferred by an instrument, note or memorandum in writing signed by the owner of the rights conveyed or the duly authorized agent thereof.

(2) Nothing contained in this section is intended to prohibit the fair use, as defined in the federal copyright law (17 U.S.C. 107), of such work of fine art. [1981 c.824 §2]

359.360 Ownership of physical work of art remains with artist unless expressly transferred. Whenever an exclusive or nonexclusive conveyance of any right to reproduce, prepare derivative works based on, distribute copies of or publicly display a work of fine 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 fine 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 the duly authorized agent thereof. [1981 c.824 §3]

359.365 Ambiguity in agreement transferring right to reproduce art work resolved in favor of artist. Whenever an exclusive or nonexclusive conveyance of any right to reproduce, prepare derivative works based on, distribute copies of or publicly display a work of fine 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 (17 U.S.C. 1 et seq.) provides to the contrary. [1981 c.824 §4]

TRUST FOR CULTURAL DEVELOPMENT

(Generally)

359.400 Definitions for ORS 359.400 to 359.444. As used in ORS 359.400 to 359.444:

(1) "Community Cultural Participation Grant Program" means the program created by ORS 359.436.

(2) "Core partner agencies" means the Oregon Arts Commission, the Oregon Council for the Humanities, the Oregon Heritage Commission, the Oregon Historical Society and the State Historic Preservation Officer.

(3) "Cultural Development Grant Program" means the program created by ORS 359.431.

(4) "Cultural organization" means:

(a) An entity that is:

(A) Exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code; and

(B) Organized primarily for the purpose of producing, promoting or presenting the arts, heritage and humanities to the public or organized primarily for identifying, documenting, interpreting and preserving cultural resources.

(b) A federally recognized Indian tribe.

(5) "Trust for Cultural Development Account" means the account established by ORS 359.405. [2001 c.954 §3; 2003 c.713 §5]

359.405 Trust for Cultural Development Account. (1) The Trust for Cultural Development Account is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Trust for Cultural Development Account shall be credited to the account. The primary purpose of the account is to serve as a repository for both public and private moneys

designated to fund specific arts, heritage and humanities programs.

(2) All moneys in the Trust for Cultural Development Account are appropriated continuously to the Economic and Community Development Department for the Arts Program for the purposes of ORS 359.400 to 359.444. [Formerly 285A.216; 2003 c.713 §7]

(Trust for Cultural Development Board)

359.410 Board established; membership; chairperson. (1) There is established a Trust for Cultural Development Board consisting of seven members appointed by the Governor. The membership of the board shall reflect the geographical and cultural diversity of this state. Each member shall have a background that demonstrates a commitment to Oregon's culture.

(2) The Speaker of the House of Representatives and the President of the Senate shall each appoint a member of the Legislative Assembly who shall be a nonvoting advisory member of the board.

(3) The term of office of each appointed member is four years, but a member serves at the pleasure of the appointing authority. Before the expiration of the term of a member, the appointing authority shall appoint a successor whose term begins on November 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective for the unexpired term.

(4) The appointment of board members by the Governor is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(5) A member of the board is entitled to compensation and expenses as provided in ORS 292.495.

(6) The board shall elect one of its voting members as chairperson and another as vice chairperson, for the terms and with the duties and powers necessary for the performance of the functions of such offices as the board determines. [2001 c.954 §4; 2003 c.713 §8]

359.413 Board quorum; meetings. (1) A majority of the members of the Trust for Cultural Development Board constitutes a quorum for the transaction of business.

(2) The board shall meet at least once every three months at a place, day and hour determined by the chairperson. The board also shall meet at other times and places specified by the call of the chairperson or of a majority of the members of the board.

(3) The chairperson shall invite representatives of the core partner agencies to all meetings of the board. [2001 c.954 §6]

359.416 Board duties; rules. (1) The Trust for Cultural Development Board shall oversee management of the Trust for Cultural Development Account and shall provide direction to the Administrator of the Arts Program for the coordination, administration and evaluation of the Cultural Development Grant Program, the Community Cultural Participation Grant Program and the use of funds received by core partner agencies under ORS 359.441.

(2) In accordance with applicable provisions of ORS chapter 183, the board may adopt rules necessary for the administration of ORS 359.400 to 359.444. [2001 c.954 §7; 2003 c.713 §9]

359.421 Board staff; staff duties. The Administrator of the Arts Program shall provide staff support to the Trust for Cultural Development Board. Under the direction of the board, the administrator shall:

(1) Coordinate grant management;

(2) Provide Trust for Cultural Development Account management and accounting;

(3) Work with cultural agencies and their constituents to communicate with and educate the public on the role culture plays in the lives of citizens and communities; and

(4) Evaluate the Cultural Development Grant Program, the Community Cultural Participation Grant Program and the use of funds received under section 13, chapter 954, Oregon Laws 2001, by core partner agencies. [2001 c.954 §8; 2003 c.713 §10]

(Disbursement of Trust Account)

359.426 Percentage that may be disbursed; allowable uses. (1) Under the direction of the Trust for Cultural Development Board, the Arts Program shall disburse each fiscal year up to 42 percent of the amount in the Trust for Cultural Development Account on July 1.

(2) The Arts Program may use up to 7.5 percent of any amount disbursed from the account under subsection (1) of this section for:

(a) Supporting the operations of the account;

(b) Facilitating technical assistance;

(c) Local cultural planning; and

(d) Other activities that encourage cultural activity.

(3) At least 92.5 percent of any amount disbursed from the account under subsection (1) of this section shall be distributed as follows:

(a) One-third to the preservation of, stabilization of and investment in Oregon's cultural resources through the Cultural

Development Grant Program as provided under ORS 359.431.

(b) One-third to Oregon's counties and to the nine federally recognized Indian tribes through the Community Cultural Participation Grant Program as provided under ORS 359.436.

(c) One-third to the core partner agencies as provided under ORS 359.441. [2001 c.954 §9; 2003 c.713 §11]

359.431 Cultural Development Grant Program; grant uses; priorities; matching funds. (1) There is created the Cultural Development Grant Program to be administered by the Administrator of the Arts Program under the direction of the Trust for Cultural Development Board. The purpose of the program is to provide preservation of, stabilization of and investment in Oregon's cultural resources. The Arts Program under the direction of the Trust for Cultural Development Board shall make Cultural Development Grants to cultural organizations through a request for proposal process.

(2) The grants may be used:

(a) To address significant opportunities to advance, preserve or stabilize cultural resources; and

(b) To invest in the development of new cultural resources.

(3) The Trust for Cultural Development Board shall give priority when awarding grants to:

(a) Proposals that have a broad cultural impact beyond the applicant itself.

(b) Proposals from applicants that have culture as a priority within the mission of the applicant.

(4) Applicants that receive a grant under this section shall be required to match the grant amount in an amount as determined by the board. [2001 c.954 §10; 2003 c.713 §12]

359.436 Community Cultural Participation Grant Program; local cultural plans. (1) There is created the Community Cultural Participation Grant Program to be administered by the Administrator of the Arts Program under the direction of the Trust for Cultural Development Board. The purpose of the program is to provide funds to counties and federally recognized Indian tribes for local cultural activities. The Arts Program under the direction of the board shall make Community Cultural Participation Grants to counties and tribes.

(2) The board shall develop guidelines for local cultural plans.

(3) A local cultural plan shall:

(a) Identify priorities and specific strategies for building public cultural participation across cultural disciplines and organizations. The strategies may include the involvement of partners outside of the cultural sector such as business organizations, schools and health and human services organizations.

(b) Identify annual benchmarks to determine the impact of grant funds.

(c) Specify local leadership and governance for grant fund management and for ongoing planning and development of benchmarks.

(4) Local cultural plans shall be broadly disseminated within each county or tribe. The local cultural plans shall be used to encourage planning and collaboration among cultural entities.

(5) The Administrator of the Arts Program shall provide technical assistance to counties and tribes to support local cultural planning. [2001 c.954 §11; 2003 c.713 §13]

Note: Section 13, chapter 954, Oregon Laws 2001, provides:

Sec. 13. (1) For the fiscal years beginning July 1, 2003, through July 1, 2011, the Arts Program, under the direction of the Trust for Cultural Development Board, shall make Community Cultural Participation Grants under ORS 359.436 to counties and federally recognized Indian tribes to support cultural activities identified in the local cultural plans. Grant funds received by a county or tribe shall be distributed locally as specified in the local cultural plan.

(2) A portion of the grant funds received each fiscal year by a county or tribe may be used for costs associated with grant management, community technical assistance and accounting.

(3) For the fiscal year beginning July 1, 2007, a portion of each grant awarded to a county or tribe may be used:

(a) For revising local cultural plans;

(b) To articulate updated priorities in the local cultural plan; and

(c) For strategies to continue deepening and expanding participation in all facets of culture.

(4) The Trust for Cultural Development Board shall allocate grant amounts for counties and tribes using a base amount, plus a per capita amount for each county or tribe. [2001 c.954 §13; 2003 c.713 §14]

359.441 Core partner agencies disbursement. (1) The Arts Program, under the direction of the Trust for Cultural Development Board, shall distribute the amount disbursed from the Trust for Cultural Development Account under ORS 359.426 (3)(c) to the core partner agencies as follows:

(a) The Arts Program shall allocate 20 percent of the amount disbursed under ORS 359.426 (3)(c) for joint efforts by the core partner agencies in fostering cooperative cultural projects, including but not limited to cultural education, cultural tourism and other cultural activities.

(b) The Arts Program shall allocate 80 percent of the amount disbursed under ORS 359.426 (3)(c) to the core partner agencies for the purposes described in ORS 359.444. The

Trust for Cultural Development Board shall determine the amount or percent of available funds that each core partner agency shall receive under this paragraph.

(2) The core partner agencies are not eligible to apply for grants from the Community Cultural Participation Grant Program or the Cultural Development Grant Program. [2001 c.954 §14; 2003 c.713 §15]

359.444 Allowable uses of funds by core partner agencies. (1) A core partner agency may use funds received under ORS 359.426 (3)(c) to:

(a) Carry out the mission and mandate of the agency;

(b) Serve more grantees; and

(c) Encourage new cultural undertakings.

(2) Each core partner agency shall expend a portion of the amount received under ORS 359.426 (3)(c) as determined by the Trust for Cultural Development Board each fiscal year to fund development of qualitative benchmarks and culture within Oregon. The evaluation of benchmarks may be done in partnership with one or more higher education institutions in Oregon. It is intended that this partnership will stimulate research and investigation of the ways in which culture and related cultural policy will impact the state over a 10-year period. [2001 c.954 §16]