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How resale right can apply to fresh-to-market lots from an artist's estate

Following our guide to Artist's Resale Right (ATG No 2404) and now published in the Guides section of this website, we have received a number of enquiries from readers asking for further information.



- Alex Capon, Laura Chesters
- 09 Sep 2019



The Artist's Resale Right feature in ATG No 2404.

Among them was one relating to the interesting case of how ARR applies to works being sold fresh to the market directly from an artist's estate.

For example, when a group of works consigned by LS Lowry's estate appeared at Christie's on June 18 they were marked in the catalogue as subject to ARR, even though they were billed as "a unique opportunity for collectors to acquire works directly from the artist's ownership, which have been on long-term loan to museums and galleries since the artist's death".

So how is it that these works – being sold for the first time – could be subject to resale right?

The rules

Both the auction house and the collecting agency DACS confirmed to ATG that auction consignments from artist's estates attract ARR as they are regarded as 'resales' under the regulations.

“The transfer of title to the artist's estate when the artist dies counts as the first transfer of ownership

Section Three of the act states that ARR applies “on any sale of the work which is a resale subsequent to the first transfer of ownership”.

The key wording in the regulations that define the ‘transfer of ownership’ (section 3, paragraph 5) states that it includes “disposal of the work by the author's personal representatives for the purposes of the administration of his estate”.

Christie's said: "The transfer of title to the artist's estate when the artist dies counts as the first transfer of ownership, making the subsequent sale by the estate through Christie's a 'resale' subject to ARR."

The auction house also confirmed that Lowry's estate would be the beneficiary of the ARR payments from the recent sale, thereby creating the unusual situation where the vendor ends up receiving the ARR payment (minus the collecting agency's fees).

DACS pointed out that "artists' estates are extremely diverse, ranging in size, scale and resources". It added: "They are not always the recipient of the Resale Royalties, as artists may decide to divide Rights among different family members or friends when they write their wills."

Who pays ARR?

In the UK, it is almost always the buyer who pays the ARR due on any sale. When the regulation came into effect in 2006, the government decided that the seller together with the art market professional involved (the auctioneer, for example) should be liable.

However, auctioneers and dealers have the option in their terms of business to decide whether to charge ARR to either the buyer or seller although, in practice, they tend to charge the buyer.

Other countries in the EU can apply ARR differently.

Read ATG's [Guide to Artist's Resale Right](#) here.