
Visual Artist's Rights Act of 1990: Important Considerations for Property Owners and Muralists

Posted on July 8, 2022

Greensboro is no stranger to aerosol-based murals. These larger-than-life, extravagant pieces of art can enrich an area with their artistic splendor and turn otherwise drab buildings into something of wonder. Many local businesses have already seen the merit of adding these creations to their buildings. Some notable local works include *Great Gatsby* by JEKS, *Girl* by The 3rd, and *Calvin & Hobbes* by Bustart (a personal favorite, located across the street from the Greensboro train station). Are you a business owner hoping to get in on the trend or a local artist hoping to upgrade to a larger canvas? Below are some critical considerations for both parties.

Works like the above-mentioned, and other murals, in addition to being potentially eligible for copyright protection, may be eligible for protection under the Visual Artist Rights Act of 1990 (VARA). VARA is a little-known federal law that forms the basis for a lawsuit only on rare occasions. The rarity of a VARA case stems partially from its obscurity but predominantly from its limited scope. VARA only applies to visual works of art that fall within a narrowly defined category of paintings (murals), drawings, prints, sculptures, and still photographs produced for exhibition only and, even then, only in limited circumstances.

For buildings with a mural already sprayed on, VARA ordinarily becomes an issue when the building owner wishes to part ways with the mural or cover it up, either wholly or partially. Under 17 U.S.C. § 106A(a)(2) and (3), VARA gives artists the right in certain circumstances to limit usage of their name, to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and to prevent any destruction of a work that is of "recognized stature," a term of art that functions as a gate-keeping mechanism. The term "recognized stature" has been interpreted to mean that art experts, the art community, or society in general views the work as possessing stature. While successful VARA claims are a rarity, penalties for intentionally distorting, mutilating, or modifying a work or destroying a work of recognized stature can be steep. In one instance, after finding that a property owner willfully destroyed multiple murals, most of recognized stature, a court awarded a group of artists \$ 6.75 million for 45 works that were destroyed by the property owner ([Link](#)). In some situations, the stakes can be high at up to \$150,000 per work.

For building owners, after the mural is sprayed on, options to remove the mural are limited if the work qualifies for protections under VARA. Instead, if a building owner wishes to retain the right to remove the mural at their option, the mural should be the subject of a contract between the parties. Under 17 U.S. Code § 113, if there is a written agreement between the artist and the building owner that specifies that installation of the work may subject the work to destruction, distortion, mutilation, or modification by reason of its removal, the building owner is free to remove the mural at their election. Without such an agreement, if the work is entitled to protections under VARA, the next question is: can the mural be removed without distortion, mutilation, modification, or destruction? If it is removable, the building owner can give the artist 90-day notice to remove the mural at the artist's expense.

For commercial real estate developers and artists alike, understanding VARA is of the utmost importance. Further, it is important to understand that some rights cannot be contracted away. 17 U.S. Code § 113 limits waiver of VARA rights to only (2) and (3) of 17 U.S.

Code § 106A. Under 17 U.S.C. § 106A(a)(1), the artist still has the right to claim authorship of the work and the artist prevent the use of his or her name as the artist of any work of visual art which he or she did not create.

It is imperative to reach out to an experienced attorney before making a decision that can have long term ramifications for your building or your art. If you need assistance navigating the legal issues surrounding VARA please contact Blake Hurt at bhurt@tuggleduggins.com (336.271.5252), Brandy Mansouraty at bmills@tuggleduggins.com (336.271.5212), Reinier Smit at rsmit@tuggleduggins.com (336.271.5266), or Connor Christensen at cchristensen@tuggleduggins.com (336.271.5254).

© 2022 Tuggle Duggins P.A. All Rights Reserved. The purpose of this bulletin is to provide a general summary of significant legal developments. It is not intended to constitute legal advice or a recommended course of action in any given situation. It is not intended to be, and should not be, relied upon by the recipient in making decisions of a legal nature. Moreover, information contained in this bulletin may have changed subsequent to its publication. This bulletin does not create an attorney-client relationship between Tuggle Duggins P.A. and the recipient. Therefore, please consult legal counsel before making any decisions or taking any action concerning the issues discussed herein.

400 Bellemeade Street, Suite 800
Greensboro, NC 27401

P.O. Box 2888
Greensboro, NC 27402

Phone: 336.378.1431
Fax: 336.274.6590