

ARTIST'S CHECKLIST: CLAIMS FOR DAMAGED WORK

INTRODUCTION

Unfortunately, despite everyone's best efforts, artworks are occasionally damaged or destroyed during shipping or an exhibition. Artists are then confronted with the process of making an insurance claim. Who processes the claim depends on who bought the insurance and when the damage occurred.

DAMAGE TO ARTWORK DURING SHIPPING

If work is damaged during shipping and insurance was purchased from the shipping company, then damage claims will be processed through the shipping company. Whoever shipped the box will have to place the "official claim," but the artist will still have to assess the damage, estimate the repair costs, and prepare a Claim for Damaged Work. Most shipping companies will refuse claims for damage during shipping - even if insurance was purchased - if they consider the packing inadequate. Thus, you must prove that the work was more than adequately protected from damage during shipping and that the shipping company caused the damage during shipping.

UPS does not officially accept "artwork" for shipping. They handle boxes roughly and state on their website that they do not provide special handling for packages bearing "Fragile" markings (or "UP" arrows or "This End Up" messages), or any similar markings. A UPS claims agent has openly declared that "all boxes should be capable of being dropped from a height of six feet without damaging contents." Fed Ex does not insure packages for more than \$500 regardless of how much the contents are valued on the shipping receipt.

Another reality is that insurers have had problems with dishonest people making claims that are wildly inflated in value. Works of art present a prime opportunity for value inflation, so most insurers will demand documentation to substantiate the value of art or jewelry. It is a good idea to make a photocopy of checks you have received for work that you have sold in the past. If you ever have to make a claim for damaged work, those photocopies of checks paid for similar work can substantiate your claim for the value of the work. Your gallery may also have to furnish an appraisal for the value of work that has been damaged.

DAMAGE TO ARTWORK DURING AN EXHIBITION OR DUE TO POOR HANDLING

If there is no visible damage to the shipping boxes (assuming that the work was packed very carefully), and the work is damaged, it may indicate that the work was damaged by the exhibition sponsors. A professional museum staff will keep "Condition Reports" for all work received and shipped. The Condition Report will precisely evaluate the condition of the work when it arrives at the exhibition space and before it leaves. This will help confirm when the work was damaged.

As an artist, if you are sending museum quality, one-of-a-kind work from your studio, you should make a condition report before it leaves your studio that lists the slightest irregularity or blemish. Keep one copy for your records. Send a copy with the work. This condition report should travel with the work for a traveling exhibition and will help tremendously to document any damage to work. This can be a very valuable asset to make an effective claim for damages.

ARTIST'S CHECKLIST: CLAIMS FOR DAMAGED WORK

This Artist's Checklist for Damaged Work itemizes a list of tasks that should be followed to make a successful claim for damaged work. The tasks are listed chronologically. Remember that the insurer will always look for reasons to deny or approve your claim - your verbal statement is not enough. You must prove your case with as much evidence as possible or your claim may be denied.

Without documentation identifying when the damage occurred, you will probably have to guess when the work was damaged and find out which party is responsible. Regardless of the situation, the artist must assess the damage, decide if the work is repairable, make an estimate for repairs, and submit a claim to the responsible party.

I. When your work is returned from a gallery or exhibition:

A. Check for damage to the exterior shipping box. Any punctures, tears, crushed sides or corners should be noted on the shipping bill or receipt when you sign for the box upon delivery.

B. Open the box IMMEDIATELY to check the condition of the work returned.

II. If your work is returned damaged or incomplete, follow the steps below. Keep in mind that nobody consciously intended to damage the work. A pleasant, positive, and professional approach will help the resolution go more smoothly.

III. Preparing a claim for damaged work takes a lot of time. If the damage to your work is minor, it may not be worth submitting a claim. If the damage could be described as due to poor design and/or construction, you will have a hard time proving your case.

IV. Save the exterior shipping boxes.

DO NOT DESTROY THE LABEL OR THE TRACKING NUMBERS.

A. The shipper will need the tracking numbers or the registration number on the box.

B. Check the condition of the exterior shipping box. Damage to the shipping box can indicate rough handling during shipping.

C. Keep all shipping box and packing materials until the insurance claim has been settled (this includes all the peanuts, Styrofoam, bubble pack, etc.). If the work was damaged during shipping, the shipper and insurer will want to check the condition of the exterior shipping box, inner shipping box, and packing materials. You will need to prove that the work was more than adequately protected from damage during shipping and that the shipping company caused the damage during shipping.

V. If the work is damaged, call the gallery or exhibition sponsor immediately.

DO NOT DELAY!

A. Tell them politely that the work arrived damaged.

B. Tell them that this phone call is to inform them so that they can initiate appropriate actions.

C. Carefully describe the damage. Do not place blame or make hostile remarks or accusations.

D. If possible, do tell them whether the damage appears to have been caused during exhibition, during packing, or during shipping. Even if you think the damage happened during shipping, the gallery is often the party who will still have to pursue the claim. This is because they were the ones who shipped the work and purchased the insurance for shipping. Ask the gallery how they want to handle the insurance claim. Ask if processing the claim is their responsibility or yours.

VI. Tell them that within a week you will:

- A. Take photos of the damage** to the work.
- B. Take photos of the shipping box** to indicate damage or lack of damage to the box.
- C. Submit a letter with estimate** for repairs along with photos.

VII. Keep detailed records of correspondence and phone calls. This may take months to resolve. (For additional security, send all your correspondence via Certified Mail, or use Delivery Confirmation) Keep copies of all correspondence.

VIII. Checklist for making a damage claim (Do this within one week):

- A. Take photos of the damage to work.** Take lots of close-up shots. These photos do not have to be professional quality but they must be in focus and properly exposed. Color prints (4"x 6" or 5"x7") are better than slides. Take three copies of each view or image (one for you, one for the gallery, one for the insurance company).
- B. Take photos of the outer shipping box and any inner shipping boxes.** Indicate damage (or lack of damage) to each box. Prints are better than slides. Take three copies of each view or image. Clearly photograph tracking numbers or U.S. Postal Service Registration numbers on the shipping box.
- C. Write a cover letter** to the shipper, gallery, exhibition sponsor or insurer with a brief description of the damage. In this initial letter, give them a specific date by which time you want them to respond. Also include tracking numbers or U.S.P.S. registration numbers from the shipping box. If your claim is with the shipper, most shippers will provide a claim form to fill out, but a cover letter and photos should accompany their form.
- D. Number the photos and make a Photo Description List** that describes each photo and the purpose of the photo. Make two sets (one for the gallery or exhibition sponsor and one for the insurance company). Keep your original.
- E. Write a damage report** describing damage to work in detail and your opinion about how the damage occurred.
- F. Submit estimate for repairs**, itemizing every single expense estimated for repair. Be exact. In your estimate include:
 - 1. Hours needed for each type of repair involved.
 - 2. Hourly rate for labor. This hourly rate should be based on what it would cost for the insurance company to find a repair firm like a metal shop or jeweler to repair your work. Be prepared to justify the rate you quote. If you are not familiar with rates, call or go to shops to find an appropriate rate, or ask friends in the business.
 - 3. List expenses for all materials needed in the repair.
- G. Send this estimate** to whomever you think is responsible for the damage (as previously discussed with gallery, exhibition sponsor or shipper). Remember the insurance company will be evaluating your claim based on these materials.
- H. Keep one copy of all materials for yourself.**
- I. Keep one copy** of each photo and the negatives.
- J. Do not throw away the shipping boxes.**
- K. Do not start any repairs** until you hear from insurance company and have received a check for repairs.

IX. Some shippers or insurance companies will send adjusters to inspect the damaged artwork. They may need to establish the market value of your work. Be prepared to furnish a copy of one or more of the following documents. Keep the original letter and documentation.

A. A letter from your gallery stating the market value of your work or documenting other work similar to the damaged item.

B. Photocopy of a check from previous sale of similar work. (Send a slide of the work sold used for comparison of market value.)

C. Appraisal from a jeweler, art consultant, curator or expert in your field.

X. Wait. Be patient. However, in the cover letter, you gave the responsible party a specific date by which time you want them to respond. If you have not heard from them by that deadline date, write another letter stating that the date to respond has passed and that their lack of response concerns you. Let them know that you want the situation resolved quickly. Ask for a new date by which you can expect resolution.

If after repeated attempts to resolve the damage claim, you have not received a satisfactory response, inform them that their lack of response gives you no alternative but to seek to enforce your legal rights. Let them know you'd still like to resolve the problem amicably, and give them a final deadline date by which time you will initiate litigation if it is not resolved.

Threatening legal action should be your last resort, but if litigation appears to be unavoidable, consult a lawyer.

XI. Resolving a claim for the full wholesale price. Insurance companies are running a business. They are not in the business of giving away money and will make every effort to recover some of their costs for a claim. For example, if you have a car accident, and the insurance makes a total loss payment on the car, the insurance company owns the wrecked car. The wrecked car is now "salvage" and the insurance company can and does sell the damaged car to recover whatever the junkyard will pay.

In the same regard, if the artist claims that the piece is not repairable and makes a claim for the full wholesale price, and the insurance pays the full amount, then the insurer can claim ownership of the damaged artwork. In other words, if they pay the full wholesale price, they own the salvage. If an artist wants to keep the salvage, the value of the salvage is negotiated between the insurer and the artist. The insurance company may then deduct the value of the salvage from the wholesale price and pay the remaining amount to the artist.

Sometimes insurance companies simply don't care about the salvage value of artwork since there is no junkyard for art. They just let the artist have the salvage with no deduction in the payment for damages.

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