

The Endless Exhibition

For decades, artists, museums, institutions and galleries have been working on model contracts for the exhibition, loan or consignment of artworks. These models are primarily suited to temporary relationships. But they are not suited to the special, discursive relationship that arises when a work is included in The Endless Exhibition.

Kunsthall Gent contacted Twee-eiige Drieling, a legal advisory firm for the arts, to look for a legal qualification or analogy appropriate to this form of relationship.

From discussions with the first participants in The Endless Exhibition, it emerged that the relationship between Kunsthall, the artist and the artwork is much more one of long-term care. The typical articles on the subjects of loan, copyright, authors' rights, liability, nail-to-nail insurance, etc., do not allow us to correctly capture the nuances of this three-cornered relationship.

One legal construction that does fully revolve around care is that of foster care, the relationship between foster child and foster parent. What follows is a document based on this form of protection, which is normally used for children and young people.

To read the contract properly, you will have to imagine that like a child, the artwork is being given the notion of a will and a status, making it more than the sum of the material and intellectual property rights of the artist and bestowing upon it the status of a person (which the law has a duty to protect). The artist, as parent, is giving the custody of the artwork to Kunsthall Gent for an undefined period, but does not lose the original connection with the work.

The resulting "foster care agreement" takes the form, structure and theme of the model exhibition agreement of Juist-is-Juist ('what's right is right'), a fair practice platform in the sector, but with all the normal terms being shaped by this concept of foster parentage and care. In order to emphasise these profound rights and obligations in the contract, we draw directly on the terminology used in the Belgian Civil Code, and appoint a family council.

Below we present a brief introduction to the terms used. During the preparations for the exhibition, the artist and Kunsthall are asked to make a number of arrangements on the basis of which this care can be reviewed.

HOW TO READ THE FOSTER CARE AGREEMENT.

Foster care is, in a sense, taking another person's child under your protection. It is often seen as an intermediate step before proceeding to adoption. It is also an option that a person wishing to raise and care for a child, and undertake a commitment to do so, can choose, without having to accept all the obligations of adoption. It serves to protect the precarious relationship between foster child and foster parent.

Kunsthall wishes to take on the burdens and obligations of the care for the artwork. But this does not mean that as a result, the artwork suddenly belongs to Kunsthall, or that something has fundamentally changed in the relationship between the artist and his, her or their work. The artist is, in some sense, ceding the care for the work to Kunsthall for the duration of the Endless Exhibition.

The foster parenthood is established by virtue of an agreement between the child and the foster parent. If the child is too young to enter into such an agreement, and so cannot represent himself or herself, then the parent must enter into the agreement with the foster parent. In any event the parent must still grant permission for the foster care. The agreement must be set out in an official deed by a justice of the peace or a civil-law notary. After that it must be affirmed by the family court.

*The analogy to the loan of the work of art is easily made. The artist must give permission and discuss the conditions with Kunsthall. **The agreement provides for this in article 8.***

*Together, the two parties draft an agreement under which the one transfers the care for the artwork to the other. The role of the family court is taken by a family council that signs for the artwork, oversees the proper performance of the agreement, and intervenes in cases of interpretation issues and discussions, doing this with the interests of the artwork and the proper relationship between foster parent (Kunsthall) and artist in mind. **The appointment of the family council and its role are described in article 18 of the foster care agreement.***

The advisory agency Twee-eiige Drieling takes the role of the justice of the peace or civil-law notary: it maintains a copy of the original arrangements and keeps track of any changes to the agreement. Twee-eiige Drieling keeps a register of this, which may be electronic or analogue.

The foster parent exercises the “right of **custody**” when the child stays with him or her. This right can be broken down into, on the one hand, the right of **material custody**: the right to have the child at home, to make decisions about his or her food, clothes, accommodations; the right to exert control over the child’s comings and goings, oversee his or her friends and social contacts, hobbies, relaxation, social media, etc.; in other words, the right to be the day-to-day caregiver or “guardian” of the child. On the other hand, it is the right of **legal custody**: the right to make fundamental choices in regard to the upbringing of the child, such as choice of school, profession, ideology, religion, language, etc.

*In our analogy this means that Kunshal gets the right to choose how and when the artwork is available to visitors, what place it is given within The Endless Exhibition after the initial placement by Kunshal and the artist, what photos will be made of it and how these will be distributed, etc. **This is regulated in article 2 of the foster care agreement.***

*The legal custody also prescribes the right (or duty?) of the foster parent to raise the child and enable the child to earn a living. In our analogy this means the inclusion of the work in The Endless Exhibition and the promotion of the work in that context, referring potentially interested parties, etc. **This is regulated in the fourth paragraph of article 1 of the agreement.***

*The principles on which all these choices and actions are based must be formulated by the artist themselves, himself or herself, in **article 8.***

Foster parenthood is not only a right. The **foster parent** also has a **maintenance obligation**, just as a parent has with regard to his, her or their child. “Maintenance” in the family-law sense comprises everything needed to lead a life of human dignity. It comprises not only food, clothing, housing, heating, etc., but also includes reasonable diversion, medical care, etc. Non-independent children can not only make a claim for payment of the costs of maintenance, but also payment of the costs of housing, health, supervision, upbringing, education and personal growth.

*This means that Kunshal is obliged to care for the artwork, keep the artwork, offer the conditions and the protection that it needs, repair it if necessary, and, moreover, cover all of the costs related to these obligations. The basic assumption is at all times the interests of and the care for the child. **This is regulated in article 4 of the foster care agreement.***

It is important to note that the parental rights such as permission to marry and adoption are not transferred. Likewise, decisions relating to the status of the person cannot be made by the foster parent.

This means that Kunshal cannot decide to lend the artwork out to someone else, consign it, sell it, or give it away. These are things the artist remains the only one competent to do. For this, we make the following analogies in the agreement:

- *the right to grant permission to marry: the donation of the artwork.*
- *the right to consent to adoption: the consignment or loan of the artwork.*
- *the right to consent to full adoption: the sale of the artwork.*

We see the status of the person as the integrity of the work: Kunshal may not arbitrarily adapt the work and has no role in the creation of the work.

This is regulated in article 5 of the foster care agreement.

*This also has a connection to authors’ rights. The artist remains the author (seen as parent of the work) and so must always be referred to as such, and is the only person who can permit an adaptation or removal of any part of the work. **These things are regulated in articles 5 and 15 of the foster care agreement.***

Foster care is a temporary title. It does not create any definitive, permanent relationships. Foster care ends on the date that the foster child reaches the age of majority, upon the death of the foster parent, upon the child’s death, upon the foster child being removed from guardianship, upon adoption, or whenever the Family Court so decides.

Just like the child will not remain in foster care forever, the artwork will not always remain with Kunsthal. There are several conceivable scenarios:

- *the agreement can end after a certain period of time.*
- *the artwork may be sold or loaned out.*
- *the artist may take the work back.*
- *Kunsthal may be no longer able to care for the work.*
- *due to a difference of opinion, the artist may decide to rescind the agreement, which may or may not involve the intervention of the family council...*

*We do, however, feel that foster care creates an affective relationship between the artwork and Kunsthal. What this means is that they are granted the right to, analogous to family albums, archive photos and other objects concerning the work and to continue to communicate as needed in the context of The Endless Exhibition. **In the agreement, this is regulated by article 17.** This is a confirmation of a limited license that Kunsthal acquires to create an archive, etc.*

FOSTER CARE AGREEMENT:

Accommodation of the Artwork in *the Endless Exhibition*

The undersigned:

1° **KUNSTHALVZW**
with registered office in(address of seat)
registered in the Crossroads Bank for Enterprises under number.....
represented in this matter by Mr/Ms (job title),
hereinafter "**the Guardian**";

AND

2° ,
residing in
hereinafter "**the Artist**";

AND

3° (name of artwork),

Hereinafter "**the Artwork**" and represented at law by the Family Council;

Collectively referred to as the Parties;

Whereas the Artist wishes to give the right to custody and care of the Artwork to the Foster Parent in its Endless Exhibition;

Whereas the Foster Parent explicitly accepts the foster parentage – the maintenance obligation and upbringing – for the duration of the agreement;

Whereas the Artist and Foster Parent acknowledge that by way of this agreement, the former continues to exercise the rights regarding the Status of the Artwork derived from the moral authors' rights and parental rights based thereon including, but not limited to: the right to adaptation, sale, loan, consignment or donation;

Whereas the Artist acknowledges that during the foster parentage a special affective relationship can arise between the Artwork and the Foster Parent, and that this establishes rights with respect to the Foster Parent after the termination of the foster care;

Whereas the Artist and Foster Parent appoint a Family Council, and explicitly assign the Family Council the prerogative of exercising supervision over the tasks of the Foster Parent; acting in any matters of interpretation relating to the present agreement or intervening in a dispute between the Artist and the Foster Parent. The Family Council will at all times decide in the interests of the upbringing, maintenance, custody and care of the Artwork;

Whereas the deed of foster care will be submitted to the Family Council for affirmation, and will be reviewed against the option and intention of the Artist and the capacity of the Foster Parent to transfer and take on, respectively, the foster parentage in the interest of the Artwork;

Whereas the Artist and the Foster Parent acknowledge that the foster care can be ended or temporarily suspended whenever the interest of the Artwork so requires;

agree as follows:

OBJECT OF THE CONTRACT

Foster Care

1. The object of this agreement is the transfer from the Artist to the Foster Parent of the custody, care, upbringing and maintenance obligation of and over the Artwork in the context of 'The Endless Exhibition'.

Foster care must be understood as the definition in article 475bis of the Belgian Civil Code (BCC), being:
"maintenance, upbringing and enabling to earn a living"

For the interpretation of this agreement, the Parties agree that upbringing and enabling to earn a living means including the Artwork and exhibiting it in the "Endless Exhibition" and, by way of the "Endless Exhibition", further presenting and promoting the Artwork, all in the interests of the Artwork.

Right of custody and maintenance obligation

2. Pursuant to article 475quater, second paragraph, BCC, for the duration of the agreement, and limited to the Artwork's stay with the Foster Parent, the Foster Parent will exercise the 'right of custody'. The right of custody gives the Foster Parent the discretionary right:
 - To keep the Artwork with the intention of nurturing it.
 - To make choices (including fundamental choices) about the upbringing and exhibition of the Artwork.
 - To exert supervision of the relationship of the Artwork to the public, social media and other Artworks over which the Foster Parent exercises the right of custody.

The Foster Parent undertakes the obligation to, in the exercise of its right of custody, take due consideration of the principles and guidelines set out in articles 8 and 11 of the present agreement. The Foster Parent will also be held liable in the event of the loss or disappearance of the Artwork, and the costs associated therewith, excepting in cases of force majeure.

3. The upbringing and enabling to earn a living means that the Foster Parent undertakes the obligation to bring the Artwork into contact with visitors to The Endless Exhibition and in the context of The Endless Exhibition to make the Artwork known and to promote the Artwork, regardless of medium, without this being detrimental to the interests of the Artwork, the Artist, the Foster Parent or other Artworks.

With this obligation in mind, if so agreed by the Parties in article 8, all information to be provided, including promotional material and curatorial texts, will be reviewed with the Artist.

4. During the agreement the Foster Parent undertakes the maintenance obligation for the Artwork. The Foster Parent will provide for the day-to-day maintenance costs for the Artwork, including everything necessary for the Artwork to have a dignified existence. This obligation comprises, at a minimum:
 - The obligation to maintain and restore the Artwork and to bear the costs of doing so.
 - To bear the costs of care of the Artwork and the relationship to third parties.
 - To provide for accommodation, heating, etc., and to bear the costs thereof.
5. Not deemed to be transferred are the rights and obligations arising from the exercise of the parental rights, and in particular the right to consent to the adaptation, marriage (donation), adoption (consignment or loan) or full adoption (sale) of the Artwork. These remain exclusively rights and obligations of the Artist. (Art. 475quater, 3rd paragraph, BCC)
6. The Artist remains the party with sole liability for decisions on the Status of the Artwork made before the start of the foster care agreement, including but not limited to copyright infringements committed in the creation of the Artwork.

Artist's work

7. The information and the condition of the Artwork will be described in an annex to be attached to this agreement.
8. In performance of article 1 the Foster Parent will maintain custody of the Artwork and nurture and maintain the Artwork in accordance with the principles of the Artist and taking into account the form and content of the Work. At regular intervals, the Parties will enter into consultations on reaffirming or re-evaluating these principles. The Family Council will be informed of any changes. The amended agreement will be filed in the register described in this agreement.

Upon signing the agreement, these are:

- (origin of the work, intention/function in the space, ideology/principle/standpoints of the artist, relationship to other works, special maintenance instructions, etc.)
-
-
-
-
-
-

MODALITIES

Period of the Foster Care

9. The Foster Parent will take on the foster care of the Artwork until the moment that:
 - The Foster Parent can no longer or no longer wishes to provide for the custody, maintenance, care or nurturing of the Artwork.
 - The Artist wishes to reclaim the guardianship of the Artwork. If the Parties wish to define a period in advance, this will be set out in the annex. The expiry of the period in the annex does not automatically terminate the foster parenthood. Such termination at any time requires an explicit expression of will from the Artist or his/her representative.
 - The Family Council makes a determination on an issue presented and assigns the guardianship back to the Artist.
 - The Endless Exhibition ceases to exist or changes its structure and content.
 - The Artwork or a portion thereof is granted the permission to marry (to be donated) or is partially adopted (consignment or loan) or fully adopted (sale).

The parties acknowledge that if at any time the interest of the Artwork so requires, the foster care can be temporarily suspended. In such cases the rights and obligations in this agreement are suspended until the moment that the Foster Parent and the Artist wish to resume the transfer of the foster parenthood to the Foster Parent. In that event the provisions of this foster care agreement are reinstated.

Domicile

10. The Foster Parent will exercise the rights and obligations in the present agreement at the following address: Vrouwebroersstraat 6, 9000 GENT (BE).

With a view to the exercise by the Artist of his/her visitation rights with regard to the Artwork, the Foster Parent will notify any change of address to the Artist in advance.

The Foster Parent warrants that the conditions in the building will be liveable.

The Foster Parent warrants that the building will be accessible to visitors, in order to allow the Artwork to develop its potential before an audience, excepting in the event of force majeure or pursuant to government order.

Description of The Endless Exhibition

11. *Kunsthal Gent wishes to experiment with new ways of approaching artworks and artists. Among the efforts made in pursuit of that objective was that in the autumn of 2018 Kunsthal Gent entered into discussions with American exhibition creator Prem Krishnamurthy. Kunsthal Gent is now testing his radical proposal to make all exhibitions permanent.*

In the "Endless Exhibition" programme line, curators and artists are invited to develop an addition to an exhibition without an end date. New additions always put pressure on the existing situation. The discussion on how the new work relates to the existing work is therefore always a conversation with all the artists involved. This approach raises questions about the autonomy and "untouchability" of separate, finished works.

The Artwork is being included in The Endless Exhibition. The Parties acknowledge that the Artwork will be living together with other artworks.

The Parties acknowledge that within the framework of the obligations with regard to other artworks, the care and nurturing needs of which may or may not be greater (either temporarily or permanently), the Foster Parent may temporarily devote more time and attention to the care and nurturing of another artwork to the extent that doing so is not detrimental to the interests of the Artwork or Artist.

The Foster Parent warrants a good organization, interplay and relationship between the Artwork and other Artworks. This will take account of the principles enumerated in article 8.

For reasons of an organizational nature or other reasons, the Artwork may be assigned to a different space at any time (*remove if not desired*).

Introduction moment

12. During the first months of the stay, the Foster Parent will organize an exhibition moment focused on introducing the Artwork to visitors, the new home and other Artworks.

The exhibition will be put in place on.....from.....to (*specify days and hours*).

The Foster Parent will arrange for, and is financially responsible for, the creation, set-up and take-down of the exhibition.

The set-up and take-down will take place in consultation with the Artist. The Artist undertakes to be present and/or participate in the set-up/take-down. The Foster Parent undertakes the obligation to follow the Artist's technical guidelines for the assembly and/or installation of the Artwork.

Compensation

13. The Foster Parent will receive no compensation for its tasks and responsibilities.

In accordance with article 475quater BCC, the Foster Parent will conduct the management of the Artwork:

“without being allowed to correlate the expenses for maintenance and upbringing with the income from the Artwork”

However, the Foster Parent is explicitly permitted to collect government funding and other resources or to ask an admission price in order to organize the care for the Artwork in the best way possible from a qualitative standpoint. The Artist will not object to the linking of this funding with the Artwork.

Placement of the Artwork

14. The Foster Parent will receive the foster care as from the following date:

xx/xx/xxxx

If the Artist is not personally capable of providing for the delivery of the Artwork in a timely manner, the Parties will make appropriate arrangements.

Likewise, at such time as the foster parenthood ends, arrangements will be made concerning the relocation of the Artwork and all items that the Artwork has collected during its stay.

The parties will devote special attention to a safe movement of the Artwork and to that end will take all possible steps, including but not limited to its insurance and packaging.

Before and after every movement outside the domicile, a report on the condition of the Artwork will be drafted.

Parentage

15. The Foster Parent will at all times make clear the link between the Artwork and the Artist and any reproductions thereof.

The Artist will provide all necessary personal details to allow the Foster Parent to do so, such as resume, website and other promotional material.

Visitation right and right of information

16. The Foster Parent and the Artist agree on the following visitation plan: during normal opening hours and by arrangement.

The Foster Parent and the Artist acknowledge that this visitation right takes precedence over any government order and cannot be diminished by force majeure.

The Foster Parent will inform the Artist at regular intervals about the Artwork, including but not limited to the accommodation and upbringing-related decisions such as relocation, restoration and recontextualization of the Artwork. If necessary, in order to respect the principles described in article 8, these decisions will be made in consultation with the Artist and/or the Family Council to the extent possible.

Information that could lead to a change in the Status of the Artwork and/or enable the Artwork to earn a living, such as interest from buyers, gallery operators, curators, art historians, etc., will be shared with the Artist as quickly as possible.

Copyright law clauses

17. If the Artwork is protected by copyright or other intellectual property rights, the Artist grants the Foster Parent permission to exercise the following rights in the context of and in the interest of The Endless Exhibition with respect to the Artwork and the promotional material for the Artwork.

The Foster Parent has the right to document, reproduce, present to the public and distribute the Artwork for promotion and communication purposes on the following analogue and digital audio and audiovisual media:

- www.kunsthil.gent and pages affiliated with Kunsthil.gent.
- Social media (Facebook, Instagram, etc.)
- Posters, flyers and other printed material and analogue promotional material.
- Audiovisual recordings.
- etc.

The Foster Parent undertakes the obligation to only use or license the rights granted in support of the custody and upbringing of the Artwork and to enable the Artwork to earn a living.

This nonexclusive license applies during the foster care, without prejudice to the provisions of the last paragraph (on archiving).

This license applies for the universe.

The Foster Parent is authorized to continue to review and access the materials arising during the agreement that document the special affective relationship between the Artwork and the Foster Parent excepting insofar as these could be injurious to the interest and the Status of the Artwork. The Artist will receive a copy and a right of use to the materials so long as this respects the special affective relationship. The Foster Parent will inform the Artist wherever third parties have created this material.

FAMILY COUNCIL

18. As Family Council the Parties appoint the following persons, whom they trust to be able to undertake the tasks described below, and to do so without any financial interest, remuneration or compensation of costs:

1. (Person selected by Artist)
2. (Person selected by Foster Parent)
3. (Independent person selected in consultation with both Parties)

The Family Council will oversee the performance of this agreement and can be called upon on all issues and interpretations concerning the care and upbringing of the Artwork and the enabling of the Artwork to earn a living.

Their decisions, adopted by simple majority, are binding on the Parties. In the event of any conflict of interest on the part of a member of the Family Council, the Parties will designate a replacement.

As first act, the Family Council confirms, upholds and recognizes the presented foster care agreement, in its full complement and representation, in the name of and for the benefit of the Artwork.

Their contact information is known to both the Artist and the Foster Parent, and they undertake the obligation to meet, if convened in a timely manner and within a reasonable period, whenever the interests of the Artwork so require. What constitutes this reasonable term will be determined in consideration of the urgency of the need for the determination or advice of the Family Council and the impact of the term on the care and upbringing of the Artwork and enabling the Artwork to earn a living.

MISCELLANEOUS

19. This agreement is governed by Belgian law. The Parties agree that in the interpretation of this agreement, the adjudicating court will take into account the will of the parties, namely by ruling in the interest of the Artwork and, by analogy, with the rules set out in the Belgian Civil Code governing foster care.
20. As applicable, the term "Artist" will also include the Artist's heirs and successors in title.
21. The following annexes make up a part of this agreement: [..... p.]

This agreement is drafted in copies with annexes, which make up a part of each copy.

Each of the parties/signatories was present at the approval and heard and approved the clauses and received a copy; in evidence thereof each party has initialled every previous page of this agreement and every page of the annexes and affixed their signatures below. One copy is intended for a register held by the registry of the Family Council (Twee-eiige Drieling, Jozef Balstraat 14, 2600 Berchem, Belgium).

After the full reading and explanation of the foregoing, the Parties signed this agreement with us, the Family Council.

in,

on

for the Artist:

.....

for the Foster Parent:

.....

For the Artwork:

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.....

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ANNEX A:

Work

Description of the work:

- Author: ...
- Owner of the artwork: ...
- Title: ...
- Reference information (material, technique):
- Edition/unicum: ...
- Numbered/un-numbered: ...
- Dimensions: ...
- Year: ...
- Method of presentation: ...
- Purchase price: ...

Presentation and installation of the work:

- Surface area needed: ...
- Playback equipment needed: ...
- Framed/with pedestal: ...
- Special requirements: ...

ANNEX B:

The foster parenthood agreement continues up to and including xx/xx/xxxx.