



ART LAW: IT'S NOT ALWAYS A PRETTY PICTURE

This is NOT gold, securities or cash, it is "Art"; precious, difficult to value and highly subjective as to taste. Art is the asset class that is often ignored in the estate planning process. Unlike securities, Art rarely has a title to its ownership; therefore, why bother planning for its disposition, simply take it off the wall (or pedestal) and hand it over to your loved ones without a shred of evidence of the transfer. Along with potential tax fraud, there are numerous planning problems with this laissez-faire approach. We must look to Art Law to shed light on these issues.

Art Law encompasses all legal aspects of the creation, acquisition, ownership, preservation and ultimate disposition of Art. Representation of "Artists," "Dealers," "Investors" or "Collectors" each present unique legal and tax issues.

The pursuit of profit as the primary motivation in owning Art is the key distinction in establishing oneself as an Investor or Dealer of Art, rather than a Collector. Here we assume that most Art lovers purchase Art for personal use and enjoyment. These individuals are characterized as Collectors. This results in the IRS treating the activity of Art collecting as a Hobby. Because of this distinction, the deduction for business related expenses and writing off losses is severely limited for federal income tax purposes.

It may be called a Hobby, but the dollars involved are often significant. Billions of dollars worth of Art will be transferred to younger generations in the next two decades. Whether this Art will remain in the family or be sold to pay estate taxes and raise capital is unknown. Christies and Sothebys, two of the largest auction houses, handle hundreds of millions of dollars of Art transactions each year. Unfortunately for the privacy of the Collector, the sale will result in detailed tax reporting to the IRS. The sheer magnitude of the dollars involved has resulted in increased IRS scrutiny.

Let's say that an Art Collector has a Renoir valued at \$2,500,000 and she decides to take the painting off the wall and give it to her daughter for Christmas. Years later, innocent daughter decides that the painting now valued at \$5,000,000 will be sold at Christies. The transaction is reported to the IRS and the paper trail begins (at the end). Did the young lady's mother report the transaction on her annual gift tax return?

What is the basis of the painting for federal income tax purposes? Suddenly, the simple transfer of the painting becomes a very expensive transaction.

Notwithstanding whether one is characterized as a Collector or an Investor, it is essential to keep excellent records about the Art's history – the acquisition cost, the authenticity, the expenses of preservation, and most importantly the valuation throughout the term of ownership. A qualified appraiser must be engaged in the formal valuation process when a tax return is required to report the transfer of Art.

The fair market value of Art may be vastly different depending on the purpose of the valuation (philanthropy, gifting, divorce or death). As they say, "beauty is in the eye of the beholder." The subjectivity and complexity of the valuation of Art makes the estate planning for the transfer of wealth from generation to generation very intricate. There are many fabulous techniques available especially if you desire to leave all or a portion of your valuable Art collection to a charity.

In the end, the lesson to be learned is to start early in the planning process by disclosing and discussing your Art collection and other valuable tangible personal property with your entire estate planning team.

Your Art is your Legacy! Plan wisely for its care and disposition.

Go to www.probate-florida.com to read more about this subject.
Learn how you can have your cake and eat it too.

Ed Wollman is a FL Bar board certified wills, trusts and estates attorney
with 26 years experience practicing in the state of FL.
Wollman, Gehrke & Solomon, P.A.

2235 VENETIAN CT #5, NAPLES, FL 34109
(239) 435.1533 — (239) 435.1433 FAX