

WILLS, ESTATES, TRUSTS & CHARITIES

Professional advice for estate clients with art assets

By Bonnie Kagan, New York art appraiser

If the estate you are handling has some real objects of art, you will either need to divide them equitably in some way, sell them off and liquidate, or donate them to charity for a tax deduction, or, a combination of these.

To keep everyone happy, the art objects should be redistributed in the optimal way, and it is best to retain an art professional to help assess the situation and recommend the best course of action, not just for all the art in the estate, but each individual piece.

In any event they will need to be appraised by a real appraiser, not someone who gives an auction estimate, or an insurance company who will simply be able to tell you what it would be insured for. You will need real values; that means *Fair Market Value*.

But, no need to worry, the umbrella of services required can be supplied by an Art Advisor, who may also be an appraiser, dealer, or some other art professional.

Getting ready for the market

The inherited art will first need to be appraised, and in so doing a report on it should refer to the art's condition and provenance (history of ownership), allude to its authenticity, and state the authorship, as well as outline some proof of ownership. All of these issues are entirely relevant and will need to be addressed so that values can be assigned and the art taken into the secondary market.

Choosing an appraiser is the most important consideration in the valuation process because this person must be familiar with the relevant and current market and the type of art being appraised, as well as having the now proper standards of appraisal methodology, being the basic qualifications of the "Uniform Standards of Professional Appraisal Practice".

Appraisers should also be affiliated with an appraisal society that has a code of ethics, such as the American Society of Appraisers. When you know the values, and this is the *Fair Market Value* for each item, appropriate for Estates, you can proceed.

A "Certified" appraisal is a legal document and must include, among other things, the appraiser's qualifications, and a signed certification page.

The appraiser's fee must not be contingent on a value conclusion, nor should the appraiser have any involvement in the sale of this art, since this is considered an unacceptable conflict of interest. If your Art Advisor can broker a sale, then a colleague, working independently, would be needed to do the appraisals.

So as not to delay the settlement of the estate it is important to address the following issues: **authorship, authenticity, proof of ownership, provenance, condition.**

If the art remains in the hands of the inheritors, you may only need to appraise it. If they want to sell it off, all the above things will need to be considered, and the Art Advisor will put it all together, as well as make recommendations as to where and how to market each item. Without doing all of this, the art may not fetch the best price, or sell at all.

Authorship

Many artists do not sign their work, but authorship can still be proven with professional research. Also there may be a "Catalogue Raisonne", or complete listing of the most important works, or, art clearly attributed to the artist, or sometimes a comprehensive compilation of all the work by an artist. The Art Advisor can report on same.

Authenticity

The best way to prove authenticity is to go to the artist. If the artist is deceased, dealers who have had a long association with the work may be acceptable authenticators. There are designated authenticity experts for most well-known European and American deceased artists who can supply a "Certificate" of authenticity. These Certificates can cost from \$1,000.00 to \$2,000.00 USD. Your art appraiser or advisor should research any Catalogue Raisonné (complete list of an artist's body of work) and this step may be able to establish authenticity and eliminate the need to go through the authenticator directly.

Proof of Ownership: Title

Clear title is absolutely necessary before any money changes hands, (especially since the discoveries of enormous amounts of stolen and looted art appearing in respected museums). A bill of sale is a good indication of title. Other things may suffice, or support title, such as photos or catalogues with the art shown, or shipping documents, or restoration reports, etc.

Provenance

The history of ownership needs to be established as best as possible. Likely the art was purchased at a gallery, and stayed in the family for decades. If this is not the case, gaps in provenance may raise questions about clear title. If this is a concern and, especially if the art predates 1945, the *Art Loss Register* can do a search. (Note, this only refers to those works of art which original owner have registered) The status of the present previous and present owners will have an influence on the art's value. Famous owners can mean higher value.

The International Foundation for Art Research (IFAR) in New York provides art research on authenticity, authorship and provenance. Your Art Advisor may be able to provide this directly, or make arrangements with either this source or other recognized scholars.

Condition

Naturally condition influences the value of the art. Even if your old Picasso has a few small nicks and layers of grime, all is not lost. Competent art restorers should be able to fix these. Old items usually have age and damage issues, often from the environment. An incompetent restoration could make things worse. Be careful whom you trust to restore.

Condition problems may not destroy the value, so it is often advisable to allow the next owner to choose their own restorer, and then the estate will not have to deal with this issue. The art can be appraised in a pre-restored condition.

Which value is most valuable??

Appraising for estate purposes is a little different than for insurance. Value in dollar amounts is contextual; this depends on the place (city, or country) or the venue, and the method of the sale. Your client may want to know: “What is the one and only value?” In fact there are different value amounts for the same item. Your appraiser can offer advice on the Relevant, or best, Market.

Insurance valuation is the highest, since it amounts to ***Retail Replacement Value***. The next is the ***Fair Market Value***, which is used to value the estate and for charitable donation for tax credits, and the next is the liquidation, or ***Marketable Cash value***, which is the wholesale, net amount that can be realized at an auction or sold through a deal in the secondary art market.

Many estate collections are disputed because the value used is what a dealer or gallery would sell the art for, and this is taken as the Fair Market value. In fact, your client would realize only a portion of this sale price.

If your clients want to keep or donate the art, your appraiser should supply the *Fair Market Value*, and if they wish to sell, then *Marketable Cash Value* should be considered.

Should you decide to sell the art, you can do so in the secondary dealer market or by auction. It may be advisable to consider each item separately and distribute to the most appropriate dealers. It is likely that the art was acquired from more than one source, so makes sense to redistribute it that way too.

Some art will actually do better at auction, and some artists' work never sells in this arena. Dumping the entire estate collection into auctions may not be the best move, but a good choice for some of it. The downside of an auction is that you cannot control the actual sale price (although it could be surprisingly high), or it may not sell at all. When this happens, the art could then bear the tag of being less desirable than originally thought, and it may need to be discounted in order to sell it.

Also, be aware of the commission auction houses take as it could be 20 or 25 percent, plus five percent for insurance. These added to other administrative costs could mean your client realizes only about 65 to 70 percent of the auction sale price. It may be a good idea to try a reputable dealer appropriate for each item first.

Your art advisor should be able to place each item into the best possible solution for the objectives of your estate's inheritors, get the property ready for the market and supervise all aspects of selling.

If any items are problematic, if the authenticity is questioned, or the prognosis of the restoration is in doubt, you may want to put these aside, so as not to hold up the distribution of the rest.

Bonnie Kagan, Art Advisor & Appraiser

Kagan Fine Art, www.kaganappraisals.com

Phone: 212 518-8690

Copyright © Kagan Fine Art Appraisals