

# amazing clients

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## Estate Planning for Your Art Collection

In many respects, art connoisseurs are as varied as the pieces they collect. Some are guided by deeply personal aesthetic sensibilities. Some revel in the intellectual discovery and methodical exploration of a particular artist, period, or genre. Some seek to build a family or philanthropic art-based legacy, and some are driven by the thrill of the hunt for the objects or investment returns. While motivation and taste vary, collectors need to plan carefully for the disposition of their art after death. With forethought and the help of an experienced estate planner, collectors may gain both financial benefits and peace of mind.

An art collection often takes many years to build. While its cultivation may not be primarily financially driven, it is useful to consider your collection as a distinct financial asset with its own unique set of issues and complications when preparing an estate plan. Failure to develop a specific plan for the future ownership of art often results in the collection being controlled by the collector's Personal Representative or Trustee, divided and distributed to family members who may not share the collector's appreciation of art, or sold so that beneficiaries receive liquid shares of the estate, often with inefficient tax consequences. Depending on the nature of the collection, and in instances where the estate being liquidated is that of the artist, a post-death sale can lead to a fire-sale effect in which the market

for the artist's work becomes flooded and potentially devalued. Here are some ways to minimize these consequences:

### Understand the Value of Your Collection

Although the art market generally trends upward in a strong economy and downward when times are tight, the fluctuation in the value of individual pieces can change rapidly as particular artists and styles go in and out of vogue, making it difficult to treat beneficiaries equally by designating certain pieces for certain people in your estate plan. One way to mitigate unequal effects of earmarking specific pieces is to obtain up-to-date appraisals of your collection and to ensure that you are relying on the appropriate kind of appraisal in making distribution decisions, since the replacement value of a unique piece for insurance purposes may be twice its fair market value. If your aim is to ensure that several beneficiaries are treated equally or to prevent the breakup of your collection, it may make sense to leave your collection to a trust, limited liability company (LLC), or other corporate entity in which each beneficiary owns a fixed percentage of the entire collection, thereby eliminating the uncertainty of trying to predict a particular work's future value. Additionally, knowing the value of your collection will enable you to make more tax-efficient decisions if the value of your estate exceeds Massachusetts and/or Federal estate tax exemption thresholds.

### Talk with Your Beneficiaries

One of the most common situations that prevents art collectors and artists alike from finalizing a plan for the disposition of their art is persistent uncertainty about whom to leave it to. Before sitting down with an estate planner, it may be worthwhile to have a conversation with each person or organization to whom you plan to leave a piece of your collection in order to determine their interests. It may be painful to hear that your intended beneficiaries do not share your love of art or a particular artist of work, but learning during life that your son would sell your most beloved Picasso or that a particular museum might refuse the bequest of your ivory collection will give you the opportunity to make other, more appropriate arrangements for the disposition of your collection while you are alive and able to do so.

### Do Not Rely on Assumptions

If the museum to which you wish to leave your collection were to tell you that they were unlikely to ever display the art, might that cause you to seek an alternative taker? If you intend for your daughters to share in the ownership of a family portrait after your death, does that mean that the survivor of the two of them will own the painting herself when her sister passes away, or that your grandchildren will become partial owners of their respective mother's share upon her death? Although you may have clear answers to these questions in mind, ambiguities like these can easily lead to litigation and family turmoil after your death. As you develop your estate plan, consider whether your instructions are sufficiently clear to avoid leaving room for multiple conflicting interpretations of your wishes in the future.

### Make Charitable Contributions Wisely

Leaving art to a charitable organization may decrease or even eliminate your estate tax liability if done carefully. While a gift of art can generate a substantial tax deduction, calculating the value of that charitable deduction can be substantially more complicated than when gifting cash or other assets. First, the nature of the charitable recipient is important: Gifts of tangible property must be related to the recipient's central charitable

mission in order to qualify for a deduction. In other words, a gift of your Mondrian to the Museum of Fine Arts will be deductible, but giving it to a school may not be. Additionally, although the deduction for a gift of art by a collector is generally based on the fair market value of the piece, as of 2018 artists who donate their own work while living are only able to deduct the cost of their materials. Donors interested in contributing art during life or as part of their estate plan would be wise to consult a qualified tax accountant, reputable appraisers, and knowledgeable attorneys to assist in the transaction.

### Using a Charitable Trust or Foundation

For individuals or families wishing to support the arts more broadly, donating liquid assets (which could be generated by the sale of an art collection) to a charitable trust or private foundation, allowing surviving family members the opportunity to participate in grant-making decisions to other charities as Trustees or board members, may have appeal. Holding a collection in such a charitable entity comes with many requirements under the tax laws, since the collection must be made available for public charitable purposes, no individual donors or estate beneficiaries may benefit from the art placed in the charitable entity, and in general a private foundation is subject to annual excise taxes on its holdings so if those holdings are comprised of a valuable art collection such annual taxes could be costly and problematic if there are no liquid assets in the entity. The charitable trust could make a long-term loan of the collection to a museum but retain ownership rights should the museum go out of existence or change its mission.

Whatever your aim – *whether keeping your art collection intact, passing it on to the next generation of your family, making tax-advantageous transfers, supporting artists and the arts, or all of the above* – with forethought and careful planning, your legacy can be realized and protected for decades to come.

**If you have any estate planning questions, please reach out to Burns & Levinson today.**

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