



PLANNING FOR UNIQUE AND PROBLEMATIC ASSETS

Presented by:
Wendy S. Goffe, JD
Stoel Rives LLP
Seattle, Washington

Collection or Nightmare?



Works of Art Are Selling at Record Prices at Auction



- March 2017: \$110.5 Million, Basquiat Painting Becomes Priciest Work Ever Sold By A U.S. Artist
- May 2022: Warhol's Marilyn Monroe sold for \$195 million

Planning For & Administering Clients' Treasured Collections *Known & Unknown*

Introduction:

Most clients believe they hold certain tangible items which are unique & valuable:

- What questions should the advisor ask at the planning stage?
- What questions should the advisor ask during the post-death administration of the client's estate/trust?



What is Art?



© Ela Bialkowska OKNO studio

Relevant Income Tax Rules

- Maximum Federal Tax Rates
- Ordinary Income = 39.6%
- LT Capital Gains = 20%
- LT Capital Gains for collectibles = 28%

Legal Determinant of Value: Authenticity



- If an artwork has not been confirmed to be authentic, the marketplace will typically reject it
- In a litigious environment, this means more and more artworks can't be sold

Alexander Calder (1898-1976)

Red Curlicue

Signed with initials 'CA' (on lower edge), Stabile – painted sheet metal. 192 x 126 x 96 in. Executed in 1973

Restoration



Determinate of Value: Provenance



The Rockefeller Money Clip

Designed an openwork gold plaque depicting Rockefeller Center

C.K. 1953, engraved 'L.S.R. 1954'

4.2 x 4 cm, 14k gold, 36.4 grams

Estimate: \$800 – 1,200

Sold for: \$75,000

Provenance: Always Look At The Back



Verso of Studio of Rembrandt Harmensz. Van Rijn
A boy reading. Oil on canvas.



Verso of Paul Klee
The Gingerbread House, 1925
with stickers and markings
© Staatliche Museen zu Berlin,
Nationalgalerie

Restricted Gifts





The IRS Art Panel

The Art Advisory Panel assists IRS by reviewing and evaluating appraisals submitted by taxpayers in support of the fair market value claimed in works of art involved in federal income, estate and gift tax cases.

- Generally, these art works have individual values above \$150,000
- Up to 25 Art Experts



Philanthropy



Philanthropy

- Gifts to public charities (related use)
- Bargain sales
- Charitable remainder trust
- Fractional interest gifts
- Testamentary gifts



Art Institute of Chicago



Museum of Contemporary Art



Block Museum



Smart Museum

PRIVATE MUSEUM

THE SOLOW ART AND ARCHITECTURE FOUNDATION

9 West 57th Street
New York, NY 10019

Monday: Inaccessible
Tuesday: Closed
Wednesday: No public hours
Thursday: Not open
Friday: Same as the rest of
Saturday: None
Sunday: Absolutely not



From [Solow Art and Architecture Foundation](http://solowfoundation.org)
(solowfoundation.org)

Lifetime Management of Gifting



Planning with Art: Gifting Choices

Donate the Collection to a Museum or other Charitable Beneficiary

Tax advantages to gifts during lifetime

- Income tax deduction based on value of work at time of gift
 - Note: artwork must be used in line with its charitable activities
 - Artwork must be delivered to the charity at time of gift

Donation at time of death

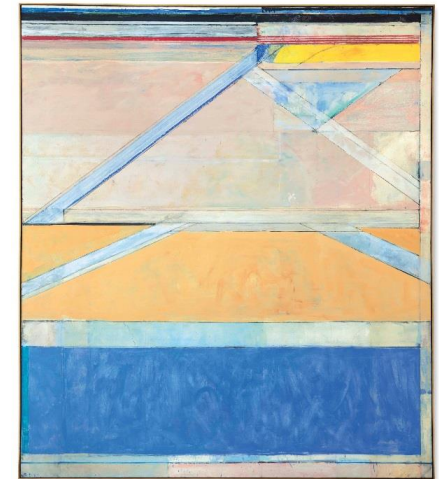
- Collection moves to institution, estate receives tax deduction based on valuation at time of death



Planning with Art: Gifting Choices

Sell the Collection & Donate proceeds

- If during lifetime must consider higher capital gains tax rates applied to art and collectibles. Also must consider sale related expenses (commission, packing, shipping, insurance)
- Selling at death is less expensive, as tax basis is increased to fair market value at date of death.
 - Trade off is that value of collection is included in the estate for tax purposes



Private Sales

- Net amount to Seller
- Fixed Commission
- Term (Length of Consignment)



Auction Sale

A transparent process that exposes an object / work of art to a wide bidding audience.

What is the appropriate marketplace?

- International Auction house
- Local/Regional small auction house or private dealer
- Online only auctions



Auction Estimates: act as a marketing tool in presenting a work at auction

Reserves: minimum price below which a work will not be sold

- Confidential amount between Auctioneer and the seller
- Never higher than the printed low estimate



Reporting and Paying Estate Tax



Specialty Financing



Artistic Executors



Issues for Fiduciaries



Issues for Fiduciaries: *Empty Hook Syndrome*

- Avoid the empty hook
- Protect fiduciaries
- Protect provenance
 - Value
 - Taxes

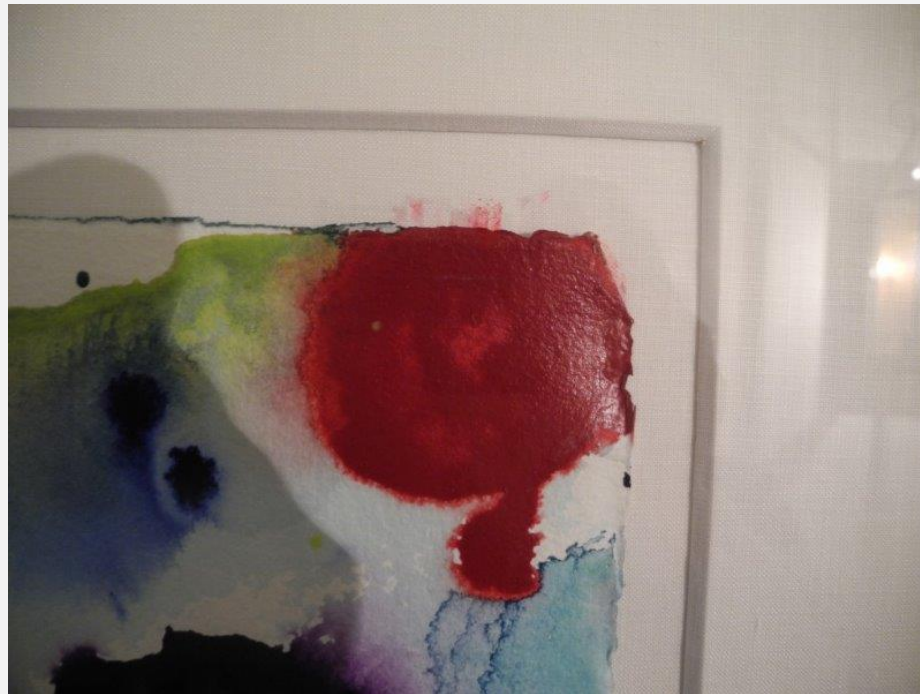


More Issues for Fiduciaries

- Secure the Collection
- Property and Casualty Insurance
- Prepare an Inventory
- Preserve Documentation



REVIEW CONDITION FREQUENTLY



Legal Determinant of Value: Good Title

Common Examples of Title Issues

- Classic Theft
- War-Looted Art
- Antiquities Looting
- Liens, Claims or Encumbrances
- Endangered Species



Lt. Frederick Shrady with Vermeer's *The Astronomer* and Rembrandt's *Portrait of Antonie Coopal* (right) at Altaussee salt mines in 1945. Photo: Smithsonian

Lt. Dale Ford (left) and Technician Fourth Grade Harry Ettlinger with a Rembrandt self-portrait recovered from the Heilbronn mine in 1945.

Classic Theft

Auguste Rodin, *Jeune Fille au Serpent*, 1886, Bronze

- Stolen from Beverly Hills mansion in 1991
- Consigned to Christie's London in 2011
- Following due diligence, the consigner was persuaded to release the sculpture to the proper owner



Forged and Stolen Work



PRIMARY SOURCES OF LAW

16 U.S.C. secs. 461 to 470aaa-11 (includes the Archaeological Resources Protection Act)

These sections of Title 16 ("Conservation") concern the preservation and protection of important historic sites, buildings, objects, and antiquities.

Convention on Cultural Property Implementation Act, Pub. L. No. 97-446, secs. 301-15, 96 Stat. 2329, 2350-63 (1983) (codified at 19 U.S.C. secs. 2601-2613)

This act implements the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property* and authorizes the President to enter into bilateral agreements with party nations to prevent the import of certain "archaeological or ethnological material."

National Stolen Property Act, 18 U.S.C. secs. 2314-15

This act prohibits, among other things, the knowing transportation or sale of stolen or fraudulently obtained merchandise (e.g., a work of art) worth \$5,000 or more.

Abandoned Shipwreck Act of 1987, Pub. L. No. 100-298, 102 Stat. 432 (1988) (codified at 43 U.S.C. secs. 2101-2106)

This act applies to abandoned shipwrecks in submerged state lands. It abrogates the law of finds and salvage; the United States takes title to these shipwrecks and then ownership is transferred to the state where the shipwreck is located.

18 U.S.C. sec. 668

Prohibits the theft of major works of art and cultural objects from museums in the United States.

19 U.S.C. secs. 2091-2095

Prohibits the importation of certain stone carvings and wall art that is the "product of a pre-Columbian Indian culture of Mexico, Central America, South America, or the Caribbean Islands."

Native American Graves Protection and Repatriation Act, Pub. L. No. 101-601, 104 Stat. 3048 (1990) (codified at 25 U.S.C. secs. 3001-13, 18 U.S.C. sec. 1170)

This act protects Native American burial sites by prohibiting unauthorized excavation and trafficking in certain items, such as human remains and funerary objects. It also establishes a system for the repatriation of items removed prior to the effective date of the act.

22 U.S.C. sec. 2459

Protects certain works of art and "other objects of cultural significance" imported into the United States for temporary exhibition at a museum or similar institution from seizure under judicial process.

HOLOCAUST EXPRPRIATED ART RECOVERY



Restitution

1999 The Seattle Art Museum returns
Matisse's *Odalisque* to The Rosenbergs



Mr. Rosenberg in 1941 with a painting by Henri Matisse.



Restricted Materials

- North American Migratory Bird Feathers
- Other Endangered Species (i.e., Marine Mammals)
- Ivory
- Tortoiseshell
- Endangered Woods (i.e., Rosewood)



Robert Rauschenberg, *Canyon*
1959



Ileana Sonnabend, Robert Rauschenberg, &
Michael Sonnabend at Galerie Sonnabend
1963. Credit: Sonnabend Gallery, NY



A George Jensen silver and ivory
blossom pattern tea and coffee set

Collecting Areas for Caution

Cultural Property, Trade Sanctions, & Import/Export

- Classical Antiquities
- Southeast Asian Art
- Native American Art
- Some Chinese Works of Art
- Tribal Art
- Persian (Iranian) Art
- Egyptian Art
- Pre-Columbian Art
- National Treasures: export restrictions by some European & Latin American Countries



Aircraft/Things With Wings

- Transfer of ownership
- Taxation Basics
- Ownership Through an Entity
- Trusts
- Advising the Trustee
- Corporations and LLCs



- Practical Alternatives to Aircraft Ownership

These Aren't Your Grandma's Brownies






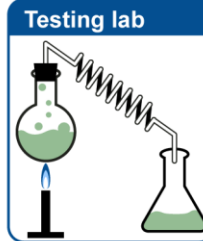
Cannabis Plant







License Types

License type			
			
Marijuana producer licensees can grow, harvest, cure, and package marijuana for sale to other marijuana producers or processors. ^a	Marijuana processor licensees can process, manufacture, package, and label marijuana, marijuana concentrates, and marijuana-infused products for sale to other marijuana processors or retailers.	Marijuana retailer licensees can sell marijuana, marijuana concentrates, and marijuana-infused products to customers who are 21 or older.	Testing lab licensees can conduct state-mandated product quality assurance testing. ^b

Source: GAO analysis of Colorado and Washington recreational marijuana regulations. | GAO-16-1

DOJ's Marijuana Enforcement Priorities



Preventing the distribution of marijuana to minors



Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels



Preventing the diversion of marijuana from states where it is legal under state law in some form to other states



Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity



Preventing violence and the use of firearms in the cultivation and distribution of marijuana



Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use



Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands



Preventing marijuana possession or use on federal property

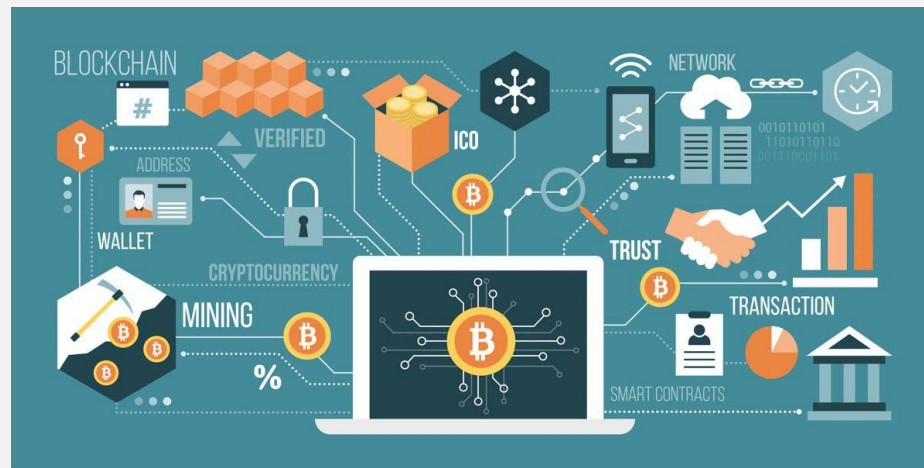
Source: Department of Justice; Department of the Interior (logo). | GAO-16-1

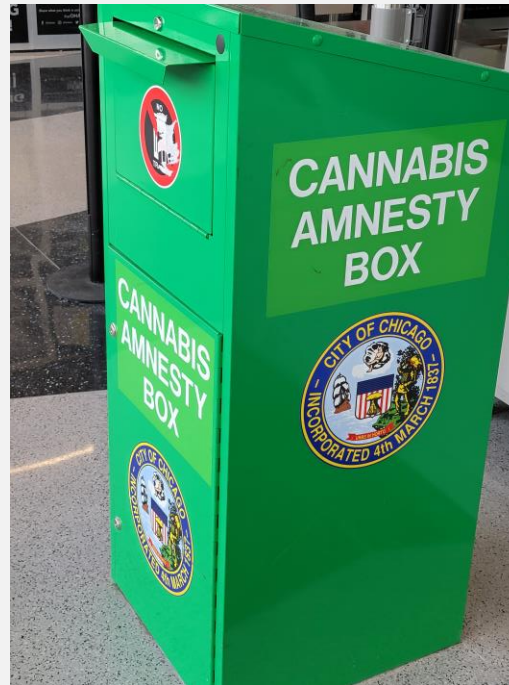
Issues for Fiduciaries





Cryptocurrency Transactions









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Presented by:
Wendy S. Goffe
(206) 386-7565
wendy.goffe@stoel.com