



The Art of the Estate Deal

BY David G. Hardin, Esq.



Valuable artwork can present a number of estate issues for the owner and the family. Generally speaking, the greater the value of the artwork, the greater the issues the owner will face. The subject can be further complicated given the sentimental value that artwork oftentimes carries with it, much like a family heirloom.

The principal decision facing the owner of artwork is how it will be disposed of in the owner's estate.

Frequently an owner of art will own several pieces so that each child will receive a piece from the owner's collection. Indeed, it seems that more often than not clients will have planned for the disposition of their artwork well in advance, either by selecting the recipient or acquiring multiple pieces so each child can have one.

Grappling with the question of who will receive artwork is often more difficult for the family than the practical issue of setting down the instructions in writing. The most direct and effective method of disposing of a piece of artwork in an estate is by clear direction in a will. Care should be taken to ensure that the artwork is adequately identified in the will. A bequest of "my favorite painting" can lead to disagreement and misunderstanding, and should be avoided.

New Jersey law permits a person to make reference in a will to a separate list, and artwork can be disposed of by such a list. However, given the possibility that a list can be lost or misplaced, it is generally recommended

that artwork of significant value be disposed of in the will rather than by separate list.

Situations where there is only one piece of artwork and several children who might like it present special challenges. In some ways, though, it is not too dissimilar from a business owner who has several children and only one child active in the business. Special care is required to ensure that all children are treated fairly and that feelings are not hurt in the process.

One possibility is that the artwork can be given to one of the children and the other children be given compensating bequests of cash or other property to offset the value of the artwork. This solution assumes that there is sufficient cash or other property for the other children. Obviously, where the value of the artwork is fifty percent of the estate and there are four children, this solution is not particularly helpful. Also, it does not help in deciding which of the children should receive the artwork when more than one would like it. Leaving family art to the oldest child or the oldest son is oftentimes not well received by the other children, as it can be viewed as arbitrary and unfair.

A second possibility is that the piece of artwork can be given to all of the children, and the children can either devise a plan to share it on an equitable basis or agree to sell it.

If the artwork is to be retained, then the children will need to devise a plan to pay for upkeep and maintenance, including insurance and occasional cleaning.

If some of the children wish to sell the piece of artwork and one or more wish to keep it, then the question of purchase price becomes important. One way to deal with the purchase price issue is allow the children wishing to keep the artwork to purchase it at its appraised value for estate tax purposes. Another way is to consign it to a dealer for sale and allow the interested family member or members to buy it on the open market.

While this latter method will typically ensure that the best price is realized for the artwork, it also presents a higher likelihood that the piece will pass outside the family and, of course, it will involve the payment of a sales commission and sales costs.

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A third possibility—actually a variation of the second—is to leave the artwork to all of the children in the will and afford them an opportunity for a period of time, perhaps six months or so, to work out an agreement among themselves as to how it is to be dealt with. The will might even dictate the price to be paid for the artwork (i.e., the appraised value). To the extent the children are unable to reach agreement, then a sale of the artwork can be directed in the will.

This approach has several potential advantages: (1) it affords family members an opportunity to retain the artwork; (2) it allows family members not having an interest in the art-

work to receive other property; (3) it can minimize disputes among family members; and (4) it is generally perceived as fair and equitable to all.

Despite the method used to dispose of artwork in a will, one thing is certain. Upon the death of an owner of artwork, the piece becomes a part of the estate and it must be valued for estate tax purposes. The only way to avoid this result is for the owner to give it away during lifetime.

Regardless of whether artwork is disposed of at death or by lifetime gift, generally it will be necessary to obtain an appraisal of the piece for death or gift tax purposes. To the extent an appraisal is required, the Internal Revenue Service insists that it be done by a qualified appraiser, and the appraiser's background, experience, education and membership in professional appraisal associations must be provided.

While the disposition of artwork in an estate presents special challenges for an owner, in some ways the challenges are not all that different from those facing the owner of a business or vacation home. The key concepts to keep in mind are providing clear instructions, assessing potential tax impacts, and, most importantly, maintaining family harmony. ▲

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