PLANNING FOR ART INVESTMENTS

Taxation, Valuation, Estate Planning, and Charitable Giving

Richard M. Horwood, J.D., LL.M., M.B.A.

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Introduction

Individuals collect for many reasons. They may start out with a toy collection or other items that provide them with pleasure and entertainment. Others are influenced by their parents, family members, or friends while they are still young. For some, an interest isn't fostered until later, developed and influenced by teachers and mentors, perhaps by a class in college, the workplace, or friendships. In addition, travel, visits to a museum, and literature can also spark an interest.

Whatever the reason, many individuals collect, and some become passionate about their pursuit. This handbook is addressed to those individuals whose interest at some point has become serious and led to a meaningful collection. In addition, I hope to guide those who inherit collections and those who advise them. I have been fortunate to have an interest in the visual arts and have shared this pursuit with many clients and friends. Much of the handbook is based upon that experience.

Most often, once the interest is sparked, a collector begins to build a knowledge base by visiting museums, reading, and taking classes and by visiting other collections, galleries, and art fairs. Of course, today, no one can underestimate the importance of the internet. Surfing the internet is a way many individuals gain knowledge at any time or location.

Sometimes, a collector begins building his or her knowledge base by making purchases based on trial and error. The collection starts to grow. At that point it becomes important to begin treating it as an investment. The process begins with assembling detailed records of the purchase price, condition, and a description and photograph of each object. Also, forming a team of collaborators and advisors becomes essential. A collector may learn from experienced collectors, dealers, curators, and teachers or by following the auction process and meeting specialists. Collecting often involves trial and error, and collectors often refine or redirect their pursuits as time goes on.

At some stage a collector may begin selling, trading, or donating works from the collection. At this time an understanding of the financial and tax implications becomes important, as well as decisions concerning succession and gifting strategies. Often an individual's interest in the collection is not shared by his or her children and grandchildren, or at least not to all of them. In that case, the collector needs to consider how and whether the collection will continue either in the hands of other individuals or in a museum, library, or other venue. As collectors spend time enjoying their objects, they should keep in mind the journey that their objects will take after their lifetime. Proper planning is essential at all points during the collecting process.

This handbook is intended to assist collectors, heirs, and advisors as they seek to develop, protect, and enhance the value of a collection and ensure an enriching legacy for future generations. I hope that the reader will find practical information that will help from many perspectives. After all, life is short, art endures.

—*Richard M. Horwood*

About the Author

Richard M. Horwood, J.D., LL.M., M.B.A., is a partner in the Trusts and Estates Group of Horwood Marcus & Berk Chartered, a law firm in Chicago, Illinois. He has devoted his practice to business, financial, and tax matters, including business law, art law, income/gift/estate taxation, as well as charitable, succession, and collection planning. He advises business owners, nonprofit organizations, donors, and collectors on a variety of complex planning issues.

Mr. Horwood advises collectors regarding key issues such as authentication; provenance; collection management; tax matters; disposition and charitable, museum, and family gifting. As a collector's counsel, he assists in enhancing the value of a collection by positioning exhibitions and cataloguing as well as working with dealers, auction houses, family foundations, and museums. He has significant experience negotiating art loan agreements, gift acceptance agreements, dealer and auction agreements, and tax-efficient planning strategies during a collector's lifetime and at his or her death.

Mr. Horwood represents a wide range of clients throughout the country, including corporations and other business enterprises of all sizes, family groups, and individuals. He has been a frequent speaker at national conferences and seminars and is the author of numerous articles concerning various aspects of business law. He was chosen as one of the Nation's Top 100 Attorneys by *Worth* magazine and was recognized in the Trusts and Estates section of the 2014 editions of *The Best Lawyers in America* and *Chicago's Best Lawyers*. He has also received the Austin Fleming Distinguished Service Award from the Chicago Estate Planning Council for his significant contribution to the improvement of estate planning practices.

Acknowledgments

I am fortunate to work with collectors on a variety of issues. That process is enhanced by their personal involvement as well as collaboration with curators, museum directors, dealers, auction specialists, and educators. It is a wonderful opportunity involving constant new discoveries. This handbook covers topics I see most often confronting collectors, heirs, and advisors. My hope is that the material will be readable and helpful to present issues for consideration and discussion. No one is an island, and in the case of this handbook I gratefully acknowledge the assistance of my colleagues at Horwood Marcus & Berk Chartered in the preparation of these materials, as well as the advice and comments of collector clients and art professionals I have been fortunate to work with. Most of all, I want to thank my wife, Janet, for her interest and enthusiasm in my endeavors.

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