

Art Gifting Considerations in 2022

by Amanda C. Andrews

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Collectors rarely amass sizeable collections over their lifetimes with the intent that their beloved works are sold upon their passing. As a result, one of the challenges collectors face involves planning for the disposition of art and other collectibles, either during their lives or upon their passing. Although collectors may have a general idea regarding what they want for the pieces in their collections after they pass, many subtle tax, legal, and practical considerations come into play in order to structure gifts and other transfers of artwork to insure a collector's intent.

At the outset of planning for a collection, collectors need to consider how they acquired their works, to whom or to which institution they want to give one or more pieces, and the practicalities involved with those persons or institutions receiving collectibles. Successful fulfillment of a collector's wishes necessitates thoughtful, collaborative, and tailored planning.

Taking Stock

Before instituting planning, collectors often need to review what they own. This includes ownership structures, documentation regarding acquisitions as well as provenance, authentication, including from an artist's foundation or inclusion in a catalogue raisonné, insurance, and storage needs. Maintenance of the works, as well as associated records and ownership structures, protects and promotes the value of a collection. Thoughtful planning is possible after solidifying the integrity of a collection.

Gifting to Family

Collectors often want to give their collections to their children and grandchildren, either during their lifetimes or upon their passing. Evaluating the timing and structure of a gift involves utilizing gift and estate tax planning to leverage federal estate and gift tax exemptions (currently \$12,060,000 per individual, \$24,120,000 per couple in 2022) as well as annual exclusion gifts (\$16,000 per donor per donee in 2022). Incremental gifting of interests in a limited liability company or other corporate or trust structure that holds collectibles may allow families to seamlessly transfer collections to the next generation while minimizing tax consequences.

Gifting to Charity

Some clients intend to donate all or part of their collections to charitable organizations, such as museums. It is of paramount importance to work with a museum's planned giving team in order to align expectations and structure a gift agreement. This will help avoid any refusal of a gift or alert a donor to potential differences of opinion regarding a gift. For example, a museum may need an additional donation in order to maintain or avoid the need to deacquisition a work of art.



Contemporary Art

Donating works by living, contemporary artists may present certain challenges. Museums may have relationships with living artists who may be allowed input regarding how their works are curated. Therefore, coordinating with the appropriate parties will help promote the value and efficacy of any gift planning.

Successful Planning

Working with skilled advisors who understand not only what it is to acquire and maintain a collection, but also the nuanced tax and legal parameters regarding planning for a collection, will help preserve a collector's legacy.

Amanda Andrews (aandrews@freeborn.com; (312) 360-6843), a member of the Trusts and Estate team at Freeborn, is happy to assist at any stage of the process to work with you and your other advisors to determine how best to maintain, grow, or deacquisition your collection.

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Amanda is an Associate and member of the firm's Corporate Practice Group. She focuses her practice on Trusts and Estates. Amanda represents ultra-high-net-worth multinational individuals, families, closely-held businesses, private foundations, private trust companies and family offices, providing them with tax and estate planning services. Amanda also advises clients regarding all tax and legal matters related to charitable planning, personal and business holdings as well as marital planning and asset protection strategies. Additionally, she represents art collectors on a range of matters from acquisitions and collection management to planning for intergenerational transfers.



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