

GUIDELINES FOR SENIOR ARTISTS

Contributors: Jeffrey Fuller, Appraiser
Robert Louis, Attorney
Michael Schantz, Museum Director
Stephen Tarantal, Artist

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Sponsored by Senior Artists Initiative
7029 Clearview Street
Philadelphia PA 19119

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Mission Statement:

The purpose of the Senior Artists Initiative is to assist senior artists in understanding the need for, and processes involved in, organizing their life's work, and to develop programs that provide recognition for senior artists.

In pursuit of this mission, the Senior Artists Initiative will:

- * sponsor activities that educate senior artists about legal issues pertaining to their art;
- * develop ways to assist senior artists in their efforts to document and inventory their life's work;
- * inform senior artists how to place their art with museums and other nonprofit institutions;
- * explore venues for senior artists' work to be exhibited.

The Board members of Senior Artists Initiative are Jeffrey Fuller, ASA, Accredited Senior Appraiser; Lydia Hunn, Professor, Westphal College of Media Arts and Design, Drexel University; Thora Jacobson, CEO, Philagrafika; Anne Kaplan, Executive Director, SAI; Robert Louis, Esq., Saul Ewing LLP; Michael Schantz, The Patricia Van Burgh Allison Director and CEO, Woodmere Art Museum; Charlotte Schatz, Artist; Zoriana Siokalo, Curator of Education and Public Programs, Michener Art Museum; and Stephen Tarantal, Dean, College of Art and Design, The University of the Arts.

Guidelines for Senior Artists

Few artists think about how to organize their work during their lives in order to know what they have, distribute it to the institutions of their choice, destroy the mediocre, document their work in an archival way, and especially make it easier for families and executors who must deal with their estates.

The Senior Artists Initiative (SAI) provides educational information to help senior artists organize and inventory their work, and to understand legal and tax implications of art as part of an estate. We also facilitate the donation of art by senior artists to museums and other nonprofit institutions.

This booklet is compiled from a series of panel discussions held by SAI in the winter of 1997-98. The authors are appraiser Jeffrey Fuller, lawyer Robert Louis, museum director Michael Schantz, and artist Stephen Tarantal. Included are discussions of strategies to inventory art work; purposes of art appraisal; and the legal and tax implications of art as part of an estate. Donations of art to museums from the standpoint of the museum as well as the artist are also discussed. The information herein has been updated in 2007 for this third edition.

The meetings took place at four locations in the Delaware Valley, with approximately 250 senior artists in attendance. The locations were:

Woodmere Art Museum
9201 Germantown Avenue
Philadelphia PA 19118

Pennsylvania Academy of the Fine Arts
Broad and Cherry Streets
Philadelphia PA 19102

James A. Michener Art Museum
138 South Pine Street
Doylestown PA 18901

Esther Klein Art Gallery, University Science Center
3624 Market Street
Philadelphia PA 19104

For further information about Senior Artists Initiative, contact www.seniorartistsinitiative.org, or Anne Kaplan, 7029 Clearview Street, Philadelphia PA 19119, 215-247-3802.

What Will Happen to Your Art after You Die?
by Jeffrey P. Fuller, ASA
Accredited Senior Appraiser, American Society of Appraisers

What will happen to your art after you die? This is the question that many artists ask themselves. Many things can happen to the art after the artist's death, depending upon how well the artist has planned for this inevitable event. An artist creates works of art during an entire lifetime. Some of these works of art will be sold, and more often than not there is a collection of works of art in an artist's estate at the time of the artist's death. These works of art will become a part of the artist's estate. This essay is about these works of art.

A fair market value appraisal of all of the works of art in the artist's estate must be completed so that proper estate taxes can be assessed to the estate. The executor of the estate will hire a certified art appraiser to appraise the fair market value of all of the works of art in the estate. Fair market value is a specific concept of value defined by the Federal Government. The Internal Revenue Code defines fair market value as follows:

The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. The fair market value of a particular item of property includable in the decedent's gross estate is not to be determined by a forced sale price. Nor is the fair market value of an item of property to be determined by the sale price of the item in a market other than that in which such item is most commonly sold to the public, taking into account the location of the item wherever appropriate. (26CFR2.1 [Title 26 of the Code of Federal Regulations, chapter 1, part 2], section 20.2031-[b]).

An appraisal is the valuation of property by the estimate of an authorized person. The appraisal report should conform to the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation located in Washington, DC.

A professional appraiser is a disinterested third party witness who reports on the market. The appraiser's fee should be based upon an hourly rate or upon a fixed fee, and never based upon a percentage of the value of the estate.

To find a qualified appraiser, one may call a nationally recognized appraisal association such as the American Society of Appraisers in Washington, DC. One may also find an appraiser by means of personal reference or recommendation by local art institutions, or even by looking in the Yellow Pages under "Appraisers." Beware of unscrupulous individuals, however, who refer to themselves as appraisers in order to get a foot in the door.

There are three approaches to value: the cost approach, the income approach, and the market data/sales comparison approach. More often than not it is the third approach, the market data/sales comparison approach, which is employed by the appraiser in estimating fair market value of works of art in an artist's estate. The appraiser will explain in the appraisal report the most relevant market in which works of art by the artist are bought and sold.

The appraiser may ask the executor of the estate for the artist's Schedules C (Business Profit and Loss), which the artist filed with his or her IRS Forms 1040 during the five years prior to the artist's death. The appraiser may also ask for all records regarding sales and consignments from five years preceding the death of the artist. To find market data, the appraiser may contact the artist's galleries for records of any sales that may have been made during the past five years. The appraiser will also search auction records for sales of works of art by the artist that appeared in cataloged sales.

The appraiser will inspect every work of art in the artist's estate. Each work of art will be described in the schedule description section of the appraisal report. Various attributes of each work of art will be noted by the appraiser, such as title of the work of art, description of the object, the date of execution, the medium/support, the size, where and how the work of art is signed, whether or not it is framed, the condition of the work of art, literature references where the work of art is cited, and the work of art's exhibition history. Lastly, after the appraiser's research, the appraiser will assign an estimate of fair market value to the work of art.

Blockage discounts of the fair market value are common when valuing a large block of stocks. This discounted value may be referred to as the present value (or the present fair market value). Likewise when valuing a large body of works of art by a single artist as of a given date of valuation, the appraiser will address the issue of blockage discount. To arrive at an estimate of the present fair market value of works of art in the estate, the appraiser may calculate the present value by applying a discounted cash flow analysis based upon the absorption rate of the past sales of works by the artist.

Specific Tips for the Artist: To better position the artist's works of art prior to these works of art becoming part of the artist's estate, several steps can be taken by the artist. The artist should find someone whom the artist can trust (oftentimes the person(s) who will inherit the works of art). The artist should inform that person about the artist's work. The artist should prepare an oral history of the artist's life and work. This can be accomplished with a good friend who asks the artist a series of questions about the artist's life and art while the conversation is being tape-recorded or videotaped. The artist and friend should first review a list of pertinent questions that will be asked of the artist prior to the taping. The friend should ask the artist these questions while the recording is being made. This tape should be reviewed afterwards and any corrections and additions should be made immediately. This tape made by the artist may be the only document of its kind about the artist that will survive after the artist's death.

It is not too late and never too soon to begin to sort through the works of art that are in an artist's potential estate. All of the works of art can be sorted according to period (date) and medium. The artist should sign all of the works of art that s/he wants signed. The works of art that the artist would rather not acknowledge should be discarded at this time so that inferior works will not remain within the artist's estate. The artist can complete this process with someone whom the artist trusts who will either become or help the executor of the artist's estate.

Inventory the works of art in the artist's possession. A simple inventory system consists of a six-digit number. This inventory number begins with the last two digits of the year in which the work of art was created. This is followed by a letter indicating the medium of the work of art, such as "P" for painting. Next this is followed by a three-digit number assigned consecutively to

works of art made within the same year in the same medium. For example "98P001" would refer to the first painting inventoried that was created in 1998. This number can be written in pencil on the upper right hand corner of the back of each work of art.

Find art dealers to represent the artist's work during the artist's lifetime. To find an art dealer, the artist should look for those art galleries that exhibit works of art sympathetic in style to that of the artist. Art dealers are in the business of selling art which is what every artist hopes for his or her art. Keep track of the artist's exhibitions and the collections in which works of art by the artist are represented. Assemble together all of the art reviews of the artist's exhibitions. Compile a *curriculum vitae* of the artist.

In brief, the artist should find someone whom the artist trusts to oversee the works of art after the artist's death. All of the works of art in the artist's possession should be put into order during the artist's lifetime. If the works of art in an artist's estate have been properly maintained and good records have been kept, the estate appraisal is a much simpler task for the appraiser, and a less expensive one for the estate. It will make it easier for the estate to continue the task of managing the body of works of art that an artist will leave behind. In this way, the artist will live forever through the artist's works of art.

Estate Planning for Artists

by Robert Louis, Esq.
Saul Ewing LLP

Many people postpone planning their estates, not wishing to confront issues of mortality; or, it may be that they believe the subject is so complex that no amount of effort will yield any useful results. They may shrug their shoulders and say, "I'll let my kids worry about it," not realizing the significant burden they are imposing on the next generation and the likelihood that far greater tax liabilities will be incurred by doing nothing.

Estate planning should not be considered a process impossible to understand and not worth the time spent. Much can be achieved with a few hours of work. The result will be that the burden on the next generation will be greatly lessened and the taxes imposed at death may be substantially reduced.

Writing a Will: What is a will? It is simply a statement of what you want done with whatever you own at the time of your death. It can be as simple as a letter of instructions. The important points are that it must clearly be a direction of what is to be done, and it must be signed and dated. In some states, there may be more required in the way of formalities, but generally this is what is needed to insure that your assets, including your art, go where you want them to go. It is probably a better idea to have a formal will drawn up, and for this you should consult a lawyer. Sample form wills are available on computer programs and in the local pharmacy, but this is too important a project to do without expert advice. A will drawn up by a lawyer will add some more formal language, but it will cover issues that you might not have thought of on your own, such as who will be your executor, the person who carries out the terms of your will, and who will be the guardian of minor children.

Will Substitutes: Not everything you own will necessarily pass by will. Certain assets may contain their own provisions determining where they go upon your death. A good example of this is life insurance. The proceeds of life insurance will go to the persons you name as your beneficiaries, on a document that is kept on file with the insurance company. Similarly, the beneficiary of any pension or profit-sharing plan benefits, or individual retirement account benefits, will be the persons you name on a beneficiary designation form filed with the plan administrator or financial institution holding the IRA.

Many people own property in joint names. Typically, a home owned by two people will be owned jointly, and this also occurs quite often with bank accounts and brokerage accounts. For most joint accounts, except those called "tenancies in common," the survivor will be entitled to the entire value of the asset when one of the owners dies.

These will substitutes must be reviewed to determine where the assets covered by them will go. They must also be considered along with the will to obtain a picture of the entire estate plan, where all of your assets will end up.

Death and Taxes: Most people pay federal and state income taxes during their lives, generally every year, and the Form 1040 and the tax rates are well known. Less well-known is the fact that both the federal government and, in many cases, the state government will impose taxes at death

on the value of all that the decedent owned, including the value of art. That is, even if you have paid income taxes on what you have accumulated during life, it will be subject to tax again at death.

Federal estate taxes are imposed at graduated rates, like income taxes, except that the highest rate is 45% in 2007. There is a threshold exemption, which is \$2,000,000 for 2007 and will gradually rise to \$3,500,000. Assets up to that amount may be passed free of federal estate tax. This may seem like a sufficiently high number to avoid tax in almost every case, but the tax is imposed on the value of IRAs and other retirement accounts, the value of your home, and the proceeds of life insurance policies, in addition to stocks and bonds, bank accounts, and art. The threshold may be exceeded when these assets are totaled.

Federal estate taxes have another very important offset: you may leave any amount to your spouse without the imposition of federal estate taxes on the transfer. Thus, it is possible to avoid all or nearly all tax on the death of the first spouse, simply by leaving everything to the survivor. This may not be the disposition you want of all of your assets, but it is a valuable deduction that can assist in planning to minimize taxes.

The combination of the threshold, usually called the lifetime exemption, and the marital deduction can produce very significant reductions or even the elimination of federal estate tax. By using trusts set up under a will and making sure that assets are owned in the optimum way, it is possible to provide for the survivor and pass on to the next generation the maximum amount possible under the federal tax system.

Many states still impose death taxes of their own. Pennsylvania imposes an inheritance tax on the assets owned at death, to the extent they do not pass to the surviving spouse. New Jersey exempts transfers to the surviving spouse and descendants. Florida imposes no inheritance tax. Some states impose their own estate taxes, which are tied to a former federal estate tax credit for state death taxes. It is important to review what the overall state death tax liability would be in your state of residence. By the way, what is your state of residence? Some people live most of the time in one state, but try to claim they are actually residents of another state, like Florida, to avoid inheritance taxes. This is a technique that must be carried out with careful planning, to avoid claims by two (or more) states that taxes are owed to it.

Planning Techniques to Lower Tax Liability: There are a number of techniques that may be employed to reduce the burden of death taxes. First, you can give assets away during your lifetime to family members. In doing so, you should be aware of the possible imposition of federal gift tax. The gift tax is similar to the estate tax, with the same rates and threshold exemption. In addition, you may give up to \$12,000 per year in 2007 to any number of persons without incurring gift tax or using up any of the lifetime exemption. If your spouse joins in the gift, the \$12,000 exemption is doubled. Gifts beyond these amounts use up part of your lifetime exemption and, if large enough, can result in the payment of gift tax currently. Payment of school tuition or medical expenses of another may be made without limit.

How do you give something away? You must intend to make a gift, and you must deliver the gift. You may not, for example, give away art but keep them in your home for the rest of your life. That will not be considered a completed gift. In making gifts, as well as in determining the

value of your estate for estate tax purposes, the issue of the valuation of art will be important, and the subject of valuation is discussed in Jeffrey Fuller's "What Will Happen to your Art after You Die."

In addition to giving art and other assets to members of your family and to friends, you may also reduce your taxable estate by giving assets to charities. This may include, for example, giving art to a museum. If the museum accepts the work, its value will be out of your estate, just as any assets left in your will to charities will escape death taxes. In addition, you may, within limits, take a deduction for income tax purposes for the value of assets given to charity. This creates a double benefit of reducing your income tax liability and your estate tax liability. This rule, is however, subject to a very important exception: you may not take an income tax deduction for the value of art you have created. Your deduction is limited to the usually nominal cost of the materials purchased in creating the art. By contrast, you may take an income tax deduction for the full value of art created by someone else and donated by you. This occasionally gives rise to schemes to get around the limit on the income tax deduction by making various types of transfers. Sometimes this works, and often it doesn't, depending on how it is done.

In Conclusion -- Plan Ahead: There is no substitute for thinking about the disposition of your assets, including art, both during your life and afterward. The process of estate planning takes some time, but the reward is usually substantially reduced tax liability, and almost always a clearer idea of what one has and what will happen to it. The certainty and peace of mind this process can lead to justifies taking time and expending the effort to be prepared for the inevitable. You and your family and friends will benefit in many ways.

Approaching Museums

by Michael Schantz, PhD

The Patricia Van Burgh Allison Director and CEO, Woodmere Art Museum

Museums are highly structured organizations, governed by policies and a defining mission, with their own unique way of conducting business. As non-profit entities, they have a privileged tax status that subjects them to certain ethical standards not similarly applied to profit enterprises. The acquisition of art is a primary mission of a museum and this activity, in particular, is governed by strict procedures and legal obligations. The following items may be of interest to the artist who wishes to interact with a museum with thoughts of placing works into its permanent collection, either through purchase, gift, or bequest. They are in no particular order.

* Museums want to know in advance that art is being bequeathed to them. Despite the wishes of the artist as stated in his or her will, there is no legal obligation on the part of the museum to accept a work of art unless some prior agreement has been made.

* It is important to know the specific collecting area of a museum you wish to approach. Many museums have a narrow acquisition focus which may preclude them from accepting a particular gift or bequest which is not consonant with their mission.

* Unless there is a special relationship with a particular museum's curator (that is, the person directly in charge of the collections) it is advisable to contact the director's office first, preferably in writing followed by a phone call. Museum directors are executives who appreciate not being surprised by an unscheduled visit or an inopportune phone call. Advance warning gives them an opportunity to discuss and review an inquiry with the appropriate staff, prior to a conversation with the artist.

* Museums prefer to have as much detailed background information on a work of art as possible, beyond the basic title and date. Does the work have an exhibition record? Did it undergo conservation? Is there something special about the technique or fabrication? Under what circumstances was it created?

* The condition of the work of art is a factor. Many museums will not accept works of art which are not in good condition and therefore would incur conservation expense.

* Generally, museums that are in the business of exhibiting the work of local artists will also be most interested in purchasing art from, or in receiving a gift from, a local artist.

* Even for those museums that may be interested in acquiring examples of an artist's work, there may be a limit to the extent that they can do so; that is to say, space and resource limitations restrict the number of works they can accept. It is unlikely, for example, that a museum will accept the responsibility for housing the entire estate of an artist.

* Keep in mind that all works of art acquired by a museum must first be approved by the board of trustees before they become part of the permanent collection. Works of art are important assets and the trustees, as stewards of a public institution, are ultimately responsible

for their care and management. Neither a curator nor a director can independently guarantee that a work will be entered into the permanent collection.

Plan Ahead
by Stephen Tarantal
Dean, College of Art and Design
The University of the Arts

My comments below will contain no technical or legalistic information. I haven't had first-hand experience as an executor of an artist's estate, so I consulted with artists and art dealers who do have experience and have developed useful ways to help their friends and family deal with their work after they are gone.

What can artists do when they are alive? Organize, Edit and Disperse = PLAN

Organize: Have a good record of your work:

- * Make visual images: a photo (Polaroid slide or electronic image) or drawing/sketch of the piece.
- * Title and sign the work.
- * Describe it: size, medium, where signed, edition.
- * Note when it was made: date each work.
- * Assign an inventory number on the art and your file card (See Jeffrey Fuller's recommendations in the first essay)
- * Keep an exhibition record: where and when the piece was exhibited.
- * Record current location, who owns it, if it were sold, or given as a gift or a trade.
- * Document if it were sold and what was the price. Subsequent changes of hands is more difficult to maintain. Appraise the work over time and keep good records of the value of your art to the extent that you are able.
- * Cultivate a mailing list of collectors of your work, and the collections you are in; maintain contact with these people.

Different methods of organizing major work:

- * 3/5 cards with Polaroid attached to one side and information on the other, chronologically filed.
- * slide documentation, installation shots;
- * large file cards with slide slots and information;
- * drawings/sketches of major pieces and a master list by year;
- * organized portfolios of works on paper, drawings, prints, etc., by year;
- * use of computer programs to scan images in latest version of ClarisWorks/File Maker Pro.

Your gallery as a record keeping resource:

- * If you have been represented by a gallery or a number of galleries, they should have records of sales and when specific work was brought in and let out to exhibitions, etc. Use the gallery to cross reference and update your records. Check in with your gallery regularly to get an update on activities. Don't rely, however, on others to keep your records.
- * Consider making an oral history of your work either on audio or video tape, chronologically covering your professional career, the nature of your work, when and where you showed your work, naming exhibitions, places, and major changes in your work.

Edit:

- * Save only the best work. Estates are taxed on work even if it is marginally significant or damaged over time.
- * Establish times within the cycle of your work when it makes sense to stop and take stock of what you have done, either after an exhibition when you are cleaning up, or when a particular series of work concludes. Regularly discard unimportant work and work that is in bad shape.
- * If you haven't done this over the years, you probably have an attic and/or basement full of work. It would make sense to **take inventory and edit**. Tackle this in small steps. Segmenting work by medium or by date might be a helpful way to organize yourself. Helpers: 90% of the senior artists lament that they have no time to organize their work. Get someone to help out - a family member, friend, or a student intern could help you and learn how to organize their own work at the same time. Most haven't thought about the consequences of their work after they are gone. Some have thought about it and have contacted a family member or friend to put in charge of dispersing their work. With no plan this will most likely be a major headache.

Disperse: Placing works of art: If you can't keep it, try to place it.

- * Reduce inventory by distributing your work (during your lifetime) to people and institutions where you would like to have your work located. It is easier for you to determine the disposition of your work than for someone else do it after your death. There is a percentage reduction if an estate is appraised and the Pennsylvania inheritance taxes are paid within a 3-month time period after death. Organizing your work is an important part of your gift to the people who will inherit it.
- * Besides having work in major museums, there are other opportunities to place work in non-profit organizations of all types and at all levels. Depending on the nature of your work, subject matter, etc., match your work with schools, hospitals, senior centers, nursing homes, zoos, or charities such as auctions for Philadelphia Volunteer Lawyers for the Arts, the Print Center, MANNA, the Philadelphia Committee to End Homelessness. Many senior artists have gotten great responses from people in these organizations.

* You can give gifts of your work valued up to \$12,000 **annually** to friends, family, and institutions and thus pass on art to the next generation without their paying tax. Please note that you cannot list these gifts as charitable deductions in your own income tax calculations.

Think about ways to reduce your taxable estate. You can give gifts, or establish a fund as part of a larger foundation or institution. Be aware also of your personal art collections. Artists often have work of other artists and these assets will be appraised as part of your estate; however you can give this art by other artists to non-profit institutions and take a tax deduction for their value.

If you know where you want your art to be in the future - after you are gone - place it there now.