

THE BRIDDDGE GROUP



“Collectors and their advisors need an advocate who knows how to lift art and collectibles out of the estate planning process, and treat them with the special handling every collection deserves.”

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The Top Ten Art Succession Planning Mistakes Made by Legal and Financial Advisors

1. Confusing estate planning with art succession planning – there are different rules and different opportunities for art assets – most importantly lasting legacies
2. Failure to use a *team approach* when planning for their clients’ art assets – collectors and their advisors need specialized advocates
3. Failure to understand the difference between clients who accumulate common objects and clients who are collectors
4. Neglecting to collect proper documentation, including cost basis, proper title, provenance and current opinion of valuation for each piece in a collection
5. Failure to develop a plan that protects art assets from creditors’ claims and incorporates advantages of current tax laws, which allow your collector clients to reduce current income tax, capital gains, and estate taxation on art assets
6. Failure to understand the effect a large art inheritance will have on your clients’ heirs, thereby putting them at risk for a family “art war”
7. Failure to understand that if a piece is “undeclared” and passed quietly to an heir (the “empty hook” approach) it will cause serious tax and legal problems
8. Failure to incorporate a post-mortem art succession plan, thereby increasing your chances of becoming an involuntary curator
9. Failure to develop strategies to leverage/arbitrage your clients’ art holdings for the benefit of their favorite charities
10. Failure to understand the behind-the-scenes art headlines in the press citing enormous auction prices. Often, the sad reality is that an unnecessarily huge amount was lost to taxes or a legacy was lost

Surprise Estate Planning – Is This A Job You Want?

Consider this true story:

A certain advisor has a 35-year relationship with his client/friend. He helped him incorporate, purchase real estate for his business, purchase other businesses, create the proper financial plans and working with the local trust company and financial advisor, integrated all of his client's business and personal assets into an efficient estate plan years earlier. After the passing of the client, and soon his client's wife, the attorney called upon the daughter to discuss the next steps regarding the estate. The daughter suggested they meet at her parents' home.

Several weeks later, the family advisor entered his client's home and quickly remarked, "Gee, I never noticed your parents had such a vast collection of art and antiques." He then quickly asked the daughter what she wanted to do with the collection. Having just lost both her parents, and in the midst of a divorce, she said to the family's long-standing and trusted friend, "Can you handle this?"

Does this sound familiar? In reading the above, are you comfortable as an advisor with this scenario?

Using conventional wisdom, the advisor, now involved in "surprise" estate planning, called a local auction house that said it would "take care of everything." Several months later, he was pleased to see the auction results yielded more than \$500,000, with one piece of furniture in particular selling for \$68,000. When he reported this to the daughter she said, "That was Mom's favorite piece!"

We now fast forward eight months later. It is a Monday morning. The advisor is in a great mood, having won eight dollars from his golfing buddies over the weekend, when he is told his client's daughter is on the phone. It seems that over the weekend her aunt called her after reading about an auction in the newspaper. The aunt said that Mom would have been so proud that her side-by-side (the piece that yielded \$68,000 in the estate auction) had sold in a New York auction for \$725,000. The daughter was shocked – and upset.

Are you still comfortable as the advisor in this scenario? Will her next call be to the local litigating firm? The advisory team obviously did not do their homework, which starts with the proper intake questionnaire dealing with all assets. Listing tangible personal property under the heading of "other" will almost always result in you becoming an involuntary curator of your client's art and antique collection. *Is this a job you want?*

It has been shown that an unplanned auction sale of art and antiques assets may cost the beneficiaries more than 70% of the value of the collection. By the time estates taxes, seller's premiums, transaction costs, under-valued sales, and unsold items are factored in, the collection could be liquidated for a fraction of the estimated value. My prediction is that it is just a matter of time before more attorneys are called on the carpet by angry heirs who are willing to sue based on the financial loss of the collection's value. Focused lifetime planning for these assets can avoid the involuntary curator dilemma. But if that has not transpired, the advisory team must think seriously about post-mortem options involving an experienced art succession planner who can assist with the determination of alternative liquidation strategies that will preserve much of the value of the collection.

So what is the best way to liquidate the assets so that the heirs are certain to have enough resources to pay the taxes due? Here are some questions you need to answer:

- Is an auction sale the best way to dispose of the items in the collection? Would it be better to identify dealers with an excellent network of potential buyers?
- Is the local auction house the best venue for the sale, or would a metropolitan area be more appropriate?
- Does it make sense to sell everything in one auction sale, or could the estate realize more by consigning items to specialty auctions that attract collectors who focus in particular areas of collecting?
- How do you get a professional opinion of value to help in the negotiations with the auction house and setting pre-sale estimates and reserves?
- Should the finest items be authenticated and/or conserved and restored in order to support higher valuation and appraisal estimates?
- Does the estate have good title to the pieces, are there any gaps in the chain of title or might artifacts in the collection have been illegally removed from another country?
- Is borrowing against some of the items in the collection to pay the taxes enabling the estate to retain some of the pieces as an investment a viable strategy?
- What is to be done with the troublesome problems of items that did not sell at the auction?

FOR ADVISORS

While admittedly these questions are daunting, their solutions are manageable. An art succession team can develop strategies that will create significant tax savings and optimize the value of inter-generational wealth transfers. You employ legal and financial vehicles in your practice every day; you are just not accustomed to using them to plan for art assets.

By working with an art succession planning team, you will be in a position to analyze the items that comprise the collection piece by piece, and begin developing donation and liquidation techniques to increase the overall value of the assets for the estate. Most importantly, you can now significantly increase the value of your client's estate consisting of art, antiques and other collectibles. By exploring art succession planning strategies, you will find you have an ethical obligation to raise your level of scrutiny in suggesting planning options for these unique assets.

Art of the Questionnaire

1. How many works are in the collection and is it documented (by description, size, medium, date, style)?
2. Is the nature of the collection eclectic or focused?
3. Do you have a current opinion of valuation from a qualified, professional appraiser?
4. How was the collection acquired? Purchased, traded, legally inherited or quietly gifted?
5. Do you have a record of cost basis and provenance?
6. Has the collection (or individual pieces) appeared in publications such as museum exhibition catalogues, books or magazines? If so, where and when?
7. What are your client's thoughts on the future of the collection?
 - a. Sell during their lifetime?
 - b. Leave to heirs?
 - c. Create a family art legacy?
 - d. Gift to charities?