New TSA Screening Requirements and How They Will Affect Your Art Shipments

We learned that beginning August, 2010, all freight on every passenger plane will be subject to TSA’s new Certified Cargo Screening Program. Imagine if your shipment is found to have a trace of nitrate – from the shoe of an art packer who just walked across a fertilized lawn. Screeners may not know the significance of what is in your crate. To them, it’s freight and they have a job to do. Out come the crowbars. The thought of workers prying open a crate of priceless art is chilling.

Today, art shipped on wide-body passenger aircraft – the way almost all art is shipped – is not screened. But in less than a year, all freight must be screened. This won’t be done at the airport by the TSA, but mostly by some 12,000 hastily trained “TSA-certified” screeners who work for cargo handling companies.

Problems are surfacing, and TSA screeners are confused even by current rules. Recently freight must be screened. This won’t be done at the airport by the TSA, but mostly by some 12,000 hastily trained “TSA-certified” screeners who work for cargo handling companies.

The name in which the insurance company will make the claim is called the Loss Payee. This is the consignee/owner of the art.

Red Flags in your Loan and Consignment Agreements?

Are you borrowing/consigning an item from someone else? If so, consider the following:

• Does your consignment agreement concur with your insurance policy exclusions? Many consignment agreements indicate that “all loss or damage” will be covered, but the insurance policy behind the agreement has restrictions or exclusions. You’re on the hook for any gap between the agreement and your policy. One example: your policy excludes damage by vermin and a mouse gnaws a hole in the art consigned to you. You, personally, would have to pay the consignor for the loss.

• Does your consignment agreement address partial loss situations? Some consignment agreements simply state that the consignee (the dealer) will pay the agreed amount to the consignor (owner of the art). However, what if a work is damaged? It can be repaired, but now it’s worth less, and based on the agreement, your consignee is promised the full agreed amount. The insurance company may pay less than the amount on the consignment agreement. You’re liable for the difference in value. Your consignment agreement should reference partial loss situations, or include wording such as “losses to be based on the agreed value.”

These are typical and frequent errors we find in agreements. We’ll be glad to check your loan/consignment agreements and discuss these issues with you.

Next issue will address agreement wording problems, we’ll respond with guidance and contract language.

The Expert’s Corner – How to Choose an Art Advisor

• The advisor should be paid by the client only, not by other parties involved in the transaction.

• Your art advisor should always represent you, the buyer of the art. He/she should advocate on your behalf during any negotiations involving art work.

• Interview different advisors to see who fits with your collecting goals. For example, do you want an advisor simply as a facilitator for art transactions or are you looking for someone who will educate you on an ongoing basis about artists, the art market, etc?

• An advisor can be a facilitator of transactions as well as function as a private curator for your collection.

• An advisor should help you with the ongoing management of your collection (i.e. purchases, sales, inventory, insurance, etc.).