

Avoiding Art Transaction Pitfalls

More than 40 art dealers attended DeWitt Stern's seminar at the Yale Club in New York in October. John R. Cahill, of Lynn & Cahill LLP, discussed Fine Art Consignment Agreements and Ralph Lerner, of Withers Bergman LLP, spoke on the essentials of the Uniform Commercial Code (UCC).

The following are a few of their suggestions.

Make sure you **get everything in writing**. The basics of a consignment agreement include:

- The sale price
- Commission (percentage or "net")
- Time frame, or length of consignment
- Expenses – shipping, packing, advertising
- Selling method – exhibition, private showings, use of images (copyrights)

Ensure that the UCC-1 filings are in place. This UCC form, available online, names you as a "secured creditor". Secured Creditors are paid first (and are often the

only ones to be paid) when artwork is seized and sold in a bankruptcy – even before the owners of the art.

There should be "representations and warranties" about who has title to the art work, its authenticity, condition and who has authority to sell. The agreement should clarify what happens in case of a dispute. Will there be arbitration? What is the controlling law? Who is responsible for attorney fees?

Both speakers agree that transparency is the key to a happy outcome. Be sure to have an insurance broker who specializes in fine art check the insurance section of the agreement before it is signed.

For a copy of Top 10 UCC and Consignment Agreement Tips plus outlines of Mr. Cahill's and Mr. Lerner's presentations, email ewiggins@dewittstern.com.

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Can You Cut Insurance Costs?

No doubt these are tough times and cutting overhead is essential. It may be possible to trim your insurance premiums.

- Dealers are cutting prices – 20% to 30% for some contemporary and modern works. If the value of your art has dropped, so should your insurance limits. After a careful inventory, you may be justified in reducing your insurance limits – and premiums – in line with the lower values.
- Return consignments that haven't sold... and drop your insurance coverage on them.
- Can you afford a higher deductible? The higher the deductible, the lower the premium.
- Give your broker a list of art fairs you're attending and an updated list of values for inventory you're taking. If total values decrease, you may see a premium savings.

Your Art Is Covered Abroad; Are your Employees?

Fine arts coverage is worldwide; your general liability policy may not be.

When your employees are traveling abroad, don't expect domestic policies to cover them for suits brought overseas. An international package policy includes the following:

- General Liability
- Workers' Compensation
- Accidental Death and Dismemberment
- Repatriation
- Non-Owned Auto – in case they rent a car or truck

In some countries, you are required to purchase coverage from an "admitted" insurer based in that country.

Video

How to Purchase Fine Art Insurance

Visit our Fine Arts web page at www.dewittstern.com to watch a four-minute video featuring Steve Pincus, Managing Director of our Fine Arts Department.

The Expert's Corner – Conserving Modern Art

Conservation is about taking measures to prevent future damage – both short term and long term.

- Don't hang works on paper next to the window or in direct sunlight.
- When using heat in the winter, ensure that humidity does not drop below 40% in order to avoid damage to wooden and other organic objects or material. In the summer, manage humidity by using your air conditioner. If you have the air conditioner turned off, run a dehumidifier.
- Protect works on paper by using UV Plexiglas or non-reflective glass. Be careful of static in Plexi with pastels and charcoal. Certain colorants in photographs are affected by UV Plexi – so check with a photo conservator.
- Have a conservator walk through your collection on an annual basis to provide ideas about treatments to consider.

– Leni Potoff
Conservator of Modern Art
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