

ESTATE PLANNING

Where there's a will, there may be a Monet

Artists can safeguard their legacies with savvy estate planning

By Nora Lockwood Toohar
Staff writer

When Philadelphia artist Jerome Kaplan died 10 years ago, his wife, Anne Kaplan, inherited about 500 pieces of his work – and the task of figuring out what to do with them.

Like many artists, Jerome Kaplan died without leaving instructions for his life-time's work.

"When an artist dies, the inheritor has to either decide to throw it all away, or try to sell it – which is difficult – or give it to nonprofit organizations," Anne Kaplan explained.

In the past decade, Kaplan has given away much of her husband's art to museums, nonprofits and family members.

"I haven't ever counted up how much I distributed up to this point, but I find mostly museums that are interested in having my husband's work as a gift. And then I have the work appraised and give the work to the institution or to my children," she said.

Robert H. Louis, a trusts and estate lawyer with Saul Ewing in Philadelphia and former president of Philadelphia's Volun-

"When an artist dies, the inheritor has to either decide to throw it all away, or try to sell it – which is difficult – or give it to nonprofit organizations."

– Anne Kaplan

San Francisco (www.artbusiness.com).

"A lot of artists and art collectors just assume everybody knows what it is worth, and what you end up with is a lot of problems, a lot of family in-fighting," he said.

Stephen Camber, an art lawyer in San Francisco and former president of California Lawyers for the Arts, agreed: "You have situations where Cousin Bill is appointed executor or successor trustee and doesn't have any knowledge and takes [the art] to Goodwill. Or, if it's a known artist, he floods the market immediately with this massive amount of work and completely devalues it."

Not having an artistic estate plan can result in costly litigation, Louis noted, such as the high-profile disputes over the estates of Andy Warhol, Mark Rothko and Robert Mapplethorpe.

"Artists delay, they make terrible mistakes," Louis said. There are a lot of tax and legal issues involved with being an artist. They need to know how to do something so their artwork doesn't burden their family."

Creative estate plans

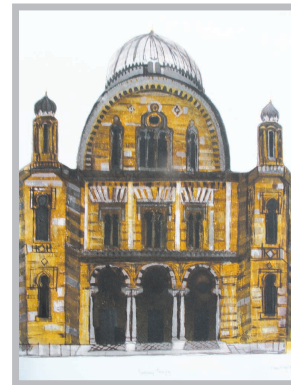
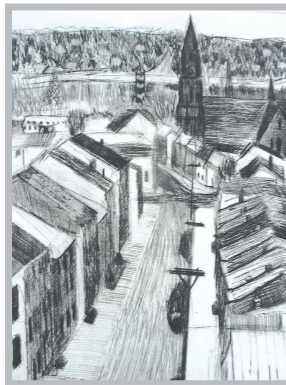
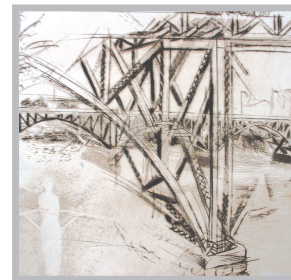
At the very least, artists should inventory their work and have a will prepared to determine how assets will be distributed.

"There are things you can do now to minimize the possibility of legal problems, mainly by specifically documenting [work] and having certain papers accessible to other members of the family," Bamberger said.

Several art law experts said that artists should also consider additional legal instruments to avoid estate complications and tax pitfalls.

Barbara Hoffman, a New York attorney who specializes in art law, has created several private foundations for artists and collectors. A private foundation, while receiving its major funding from one donor, must benefit the public in order to receive tax-exempt status.

Many artists who set up foundations which will ultimately be funded by the sale of their artwork also set up non-charitable trusts if they have children or spouses to



"You have situations where Cousin Bill is appointed executor and doesn't have any knowledge and takes [the art] to Goodwill."

– Stephen Camber

teer Lawyers for the Arts, said artists' estates present unique issues for families.

"You have issues about how and where to dispose of the art, how to value it for tax purposes and how to pay any taxes that are due," he said.

Family members know nothing

Being creative types, many artists avoid simple steps that can save families from painful decisions about distributing their work after their deaths.

"Most artists really would rather make art than inventory it," Kaplan said. "They tend not to do it."

But experts say it's a mistake to assume family members will know what to do with artwork after an artist dies.

"You should assume that your family members know nothing," said Alan Bamberger, an art consultant and appraiser in

provide for, she said.

Camber recommends a revocable living trust as a way to plan for the future and avoid going through probate, which can be time-consuming and costly. Revocable living trusts are recognized in all 50 states. If an artist becomes incapacitated or dies, an executor of the trust can sell or donate artwork to benefit the artist's beneficiaries.

"You need someone to take over after your death – or during your life while you are not competent to handle it yourself – to make sure that the value of your art is fostered," Camber said.

It's important to appoint an executor who is knowledgeable about the artist's field and how the art world works, several experts stressed. The executor might arrange shows of the artist's work, or make targeted gifts to charitable institutions or art schools. It's also important that the executor be someone who is able to serve in a fiduciary capacity and protect the beneficiaries' interests.

Helping artists plan ahead

Shortly after her husband died, Kaplan launched a project through the Senior Artists Initiative, a Philadelphia nonprofit, to help aging artists catalog and document

Philadelphia artist Jerome Kaplan left his wife with more than 500 pieces of artwork when he died – and no instructions on what to do.

their work and plan how to dispose of work after their deaths.

So far, the group has helped 50 artists over age 55 inventory their work and begin approaching organizations about accepting their art work for their collections.

"We also encourage artists to go through their work and throw away any work they don't want to be out in the world," she said. "It's very hard for families or inheritors to make those decisions, and you feel sort of disloyal if you throw things away."

Additional information on estate planning for artists is available at:

- www.seniorartistsinitiative.com/01_about_sai/guidelines.html
- www.artbusiness.com/estateplan.html
- www.sharpeartfdn.org/estateplnbook/estateplanning.htm

Questions or comments can be directed to the writer at: nora.toohar@lawyersusaonline.com



Experts FOR EVERY NEED Service SECOND TO NONE



TECHNICAL ADVISORY SERVICE FOR ATTORNEYS

800-523-2319
experts@tasanet.com
www.tasanet.com

- Local & National Consulting and Testifying Experts in 10,000 categories
- More than 900 medical specialties through TASAmey
- Services include prompt, customized referrals, resumes, and your initial interview calls with experts

More Experts. More Options. More Personal Service.