

ESTATE PLANNING FOR COLLECTORS, AUTHORS, ARTISTS AND MUSICIANS

Estate Planning for Collectors

Many of our clients own art and other valuable collectibles, including such things as paintings, sculptures and other artwork, antique furniture and antique cars, important jewelry, vintage wines, rare first edition books, coin collections, rare stamps and similar items. Cummings & Lockwood can assist with the design and implementation of various estate planning strategies related to these special assets. For example, trusts and estates attorneys:

- Provide advice with respect to the valuation of these assets, and the importance of different kinds of appraisals such as insurance appraisals and tax appraisals.
- Provide advice regarding the tax benefits or tax consequences of disposing these assets, including by selling, donating, gifting or bequeathing the art
- Recommend strategies for dealing with the taxes that may be incurred if these items are sold
- Recommend strategies for lending or donating art or other collectibles to a charitable organization or donating to a charitable remainder trust
- Draft gift agreements between the donor and charitable organization
- Advise on and prepare documentation needed to substantiate the value of the donation, as the IRS has specific rules for obtaining tax deductions for charitable donations of artwork
- Facilitate discussions between the donor and charitable organization for loaning artwork and assist with the review and preparation of loan documentation
- Help analyze the tax advantages and disadvantages of implementing transfers and sales during lifetime or at death
- Handle art-related litigation and arbitration including consignment disputes, controversies in the purchase or lending of items and family conflicts regarding the ultimate disposition of these assets
- Provide counsel with regard to the selection of Executors and Trustees to manage the distribution of important collections at death
- Facilitate discussions with next generation family members regarding the disposition of the artwork to ensure fairness and to avoid costly litigation

Estate Planning for Authors, Artists and Musicians

Cummings & Lockwood understands the unique issues involved in planning for and administering estates that consist of assets created by an individual's personal literary or artistic efforts, such as authors, artists and musicians. These assets may comprise the bulk of an artistic client's net worth and estate presenting special

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valuation, copyright, contractual, business management, income tax, and transfer tax issues that must be considered when planning to gift these assets during life and to provide a plan for their distribution at death.

Factors that must be considered in developing an estate and tax plan for creative clients include:

- The likelihood that the creator's gross estate will include a substantial inventory of literary or artistic works, copyrights and contractual royalty rights that may be difficult to value
- Whether the beneficiary (spouse, children, close friend, museum, library or other charity) is the statutory heir entitled to exercise termination rights
- The possibility that the creator will achieve recognition in the future, with the potential for additional appreciation of the value of their works even after death
- The potential need to sell some of the creative assets at death to raise funds for estate taxes, even if a sale is not desired by client or the beneficiaries
- The negative impact several sales in a short timeframe may have on the overall value of the assets and how that factors into the timing of sales and the valuation of the assets for tax purposes
- The lack of a ready market for the works which may make it difficult to pay the gift, estate and/or generation-skipping transfer taxes on a timely basis
- The fact that estate taxes may be assessed on the retail values of the artwork, even though those values are reduced by commissions of the agent, auction house or dealer when those works are sold
- The risks associated with fluctuations in the markets for creative works, which may expose an estate to estate tax liability for values determined as of the date of a creator's death, even though the value of the works when sold may be substantially lower (or higher) than the values upon which the taxes were computed

Our estate planning attorneys advise on the gift and estate tax rules and planning structures that are particularly relevant to estate planning for artists, authors and musicians, including:

- Advising creative individuals on the transfer of their creative assets to their intended beneficiaries, both charitable and non-charitable, during life and at death
- Advising beneficiaries on the tax issues affecting them upon the receipt of the creative property after the individual's death
- Advising on charitable giving techniques and the policies of charitable institutions for the acceptance of gifts and bequests
- Advising on the valuation of works of art and intellectual property and their fair market value which form the creator's gross estate at the time of their death
- Advising on estate administration and other practical issues that the fiduciary of a creator may face

Cummings & Lockwood - *The Choice* for sophisticated legal counsel.