

Art & Trust

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CATEGORY:
ARTICLE



There is no typical art collector; some inherit significant collections whilst others develop a passion for art during their lifetimes and gradually build their collection from scratch. There is no typical collection either; items collected might range from paintings to furniture to coins or stamps. The needs and wishes of collectors are correspondingly diverse and this can make it difficult to offer generic advice. However, one thing that many collectors will have in common is a desire to ensure that the collection they have devoted time and effort to nurturing is preserved both during their lifetime and for future generations – either of their family or of art lovers more generally.

Ownership through a trust structure can offer significant advantages over direct ownership, in terms of preservation of wealth generally and in particular in relation to art collections. The very wide range of trust formats available and the huge flexibility which careful drafting can incorporate into trust instruments allow structures to be tailored to the needs of the particular client and collection. This adaptability can make the trust an ideal vehicle for holding art.

Many wealthy individuals increasingly spend their time between a number of jurisdictions and their families may also be spread around the globe. As a result, their estates can be subject to the laws of several different jurisdictions. This can have an impact not only in terms of tax, but also in terms of succession and the vulnerability of assets, including works of art, on divorce or from creditors in general.

Using a trust simplifies the situation on the death of the collector. There is no change in legal ownership, which remains with the trustees, so the need to comply with probate formalities – and the publicity that often goes with them – is removed. During the collector's lifetime as well, the fact that legal ownership rests with trustees can allow the collector to maintain a greater degree of confidentiality and privacy which can be appealing.

Succession laws, including forced heirship rules prevalent in many civil law jurisdictions and in sharia law, can threaten the integrity of an art collection after the collector's death. There is a risk of a significant collection being divided up in order to satisfy claims in the individual's estate. Ownership through a trust can help to avoid the collection a client has devoted time and attention to building and managing being broken up in this way. It is not only on death, though, that an individual's art collection can be at risk from legal claims. The increasingly litigious nature of life in the 21st century makes assets more at risk than ever from attack by creditors generally or on divorce.

Mitigating these risks of attack requires careful analysis on a case by case basis, taking into account the particular laws of the jurisdictions relevant to the client as well as practical issues such as the potential rights of heirs, spouses or creditors, where claims could be made, the jurisdiction in which the trustee is to be located, the jurisdiction in which the assets themselves are located and the proper law of the trust.

Perhaps the greatest advantage of the trust, though, is its flexibility. With skilled drafting, it is possible to tailor and structure a trust not only to suit a particular collector's needs and wishes from the outset, but also to retain the flexibility to adapt to changing circumstances going forward. A client's wishes for his art collection may be more complex than for any other assets; he may wish it to be held for charitable or philanthropic purposes, either in the short term or in the long term, whilst also allowing his family to have use of certain pieces or to benefit from the value tied up in the collection during their lifetimes.

As the art market becomes increasingly sophisticated, new experts are emerging: alongside the traditional valuers, lawyers and tax advisers, the modern collector may engage the services of specialised security and IT consultants. It is impossible to predict just how the management of collections might alter in the future. Charles Saatchi has recently set up a scheme to rent out pieces from his collection to the public and this may lead to the development of a new market in art rentals. A well-structured trust can allow new innovations to be embraced whilst also imposing a degree of control through requirements for third party consent. In the case of a significant collection, a protector committee or company made up of a variety of relevant experts could offer useful guidance to trustees as well as serving as a reassuring check on their powers.

The use of a trust structure can allow the collector to ensure the integrity of his collection is preserved and that his wishes for it are carried out

after his death as well as during his lifetime, whilst still allowing sufficient flexibility for the trustees to be able to deal with the collection in the most appropriate way, given inevitable changes in the art market as well as in tax law, political regimes and the needs and circumstances of beneficiaries.