Those lending works of art to museums should carefully consider the agreements crafted to govern such loans. The savvy lender will ensure that a loan agreement includes not only standard provisions for the location and length of the loan, but also terms tailored to protect the lender from potential liabilities, including risk of loss or damage to the art, its unlawful reproduction and possible exposure to certain taxes. With international loans, such issues, along with securing immunity from seizure, assume a more complex tenor.

Loan agreement provisions: from basic to sophisticated

Clearly, a loan agreement should name the lender and borrower, identify and describe the work being lent, set forth the insured value (specified by the lender) for the work and include the dates, location and title, if any, of the exhibition. Also addressed in most standard loan agreements issued by museums are the following: costs of round-trip packing and shipping the art (usually borne by the museum), specification by the lender of the credit line at the exhibition for lending the art, insurance coverage by the museum, while the art is on its premises, in the amount of the stated insured value of the art, and authorization by the lender for the museum to photograph the art being loaned for documentation, educational and publicity purposes in catalogues, press or promotional materials.

To maximize protection for the lender, however, he or she would do well to issue his own loan agreement. Such an agreement is tailored to the lender’s particular needs, addresses the same issues in greater depth and with less exposure to the lender, and incorporates other concepts not included in the standard agreement. For example:

Reproduction rights

The museum may wish to include photographs of the work being lent in its catalogue, publicity materials or other publications. It may also wish to feature the work in a telecast or to produce and distribute slides of the work for publicity or educational purposes. The museum may even seek permission to reproduce images of the work for commercial purposes, such as on posters and coffee mugs to be sold in a museum gift shop. If the work is in the public domain, copyright issues do not come into play and permission for any of the above uses need only be secured from the owner of the work – in most cases, the lender. If, however, the work is under subsisting copyright, it is not only the lender who must grant permission but also the owner of the copyright – who invariably is not the lender. And as the well-drafted contract makes clear, securing such permissions is strictly the museum’s responsibility.

Insurance

A loan agreement should not only provide that the museum will insure the work of art for a sum certain specified by the lender, but should also ensure that all claims – whether for full or partial damage – will be based on this stated value. Additionally, the loan agreement should specify the type of insurance to be provided: all risk fine arts insurance coverage under the museum’s blanket fine art policy or with an insurance rated by A.M. Best’s A- or better, as well as the period of coverage, which should be wall-to-wall.

Work not being offered for sale

The well-drafted loan agreement should provide in a prominent place that the borrower of a work of art has no authority or right to sell or pass title to the work or to offer the work for sale under any circumstances. While, because of Uniform Commercial Code considerations, this provision is particularly crucial when lending art to an art gallery within the United States for purposes of an exhibition, it is also desirable to include this or similar language in an agreement to loan to a US museum. It reinforces the museum’s role as a tax-exempt public trust, rather than as a site of commerce where works on exhibition might be accessible as the subject of a sale.
While an agreement for a loan of artwork to a museum outside of the United States will largely parallel that for a domestic loan, the lender should be apprised of several issues unique to international loans.

**Insurance**

Insurance provisions with respect to international loans of artwork may make reference to government insurance. Under the Arts and Artifacts Indemnity Act of 1975, for example, the United States government guarantees to pay loss or damage claims arising from museum exhibitions of myriad types of artwork, provided that the work in question is of educational, cultural or scientific value and is certified by the secretary of state or a designee as being in the national interest. A well-crafted agreement for an international loan of artwork should address the issue of any government insurance to be furnished by the hosting government (e.g. in the UK, the Government Indemnity Scheme), in addition to the standard insurance coverage to be provided for the art by the foreign borrowing museum.

**Seizure**

Where artwork is loaned internationally, the lender must be conscious of the possibility of seizure of the work by court order if a legal claim is brought against the object, lender or borrowing museum, even if the litigation is unrelated to the loan. The United States enacted an immunity statute in 1965 to assuage the concerns of international lenders with respect to such seizure. It provides that an object imported into the United States by a non-profit organization for temporary display is immune from judicial process, including seizure, if, before the object enters the United States, the US Department of State, on application by the borrowing institution, finds that the object is of cultural significance and that temporary exhibition of the object is in the national interest. A lender should be aware of, and an agreement governing an international loan of artwork should consider, whether the country in which the loaned work will be exhibited has or lacks a similar immunity provision.

**Tax considerations**

The lender should be apprised of any tax considerations that may arise with respect to international loans of artwork. For example, under Section 2105© of the US Internal Revenue Code, works of art that are owned by a non-resident who is not a citizen of the United States will not be subject to estate tax if such works are on loan to a public gallery or museum in the United States at the time of the owner’s death. The lender should be apprised of any similar or other tax provisions of the hosting country of the loaned artwork which may apply to the lender, and may wish to address those tax provisions in the loan agreement.