

FT Wealth **Private wealth**

Why an art collector's estate needs tight planning

Key to avoiding bitter conflict among heirs is to have candid discussions well before the reading of the will



John Constable's 'The Lock', a source of friction in the Thyssen family © Getty

James Pickford JUNE 21, 2019

How much is a dog bowl worth? To one fan of Joan Rivers, the US comedian, the answer was \$14,000. Two years after her death in 2014, Rivers' family put hundreds of her personal items up for auction at Christie's in New York, including dresses, furniture, art and jewellery.

But it was the silver Tiffany bowl, engraved with her dog's name, Spike, that hit the headlines after it sold for 30 times its estimate.

The sale was a demonstration that one of the skills of an auction house is in creating a buzz around the estate of a late collector, generating demand for objects that, had they been sold separately, might have failed to attract anything like as much attention.

Since the same principles apply to de Kooning paintings as to dog bowls, it follows that auctioneers, galleries, dealers and museum directors treat as a well-organised discipline the cultivation of wealthy collectors — and the family members who face the question of what should happen to a relative's treasured art works on their death.

A collector who spends a lifetime and a personal fortune building up a trove of art is likely to have strong views about what should happen to it after they are gone. But their heirs might not always agree — and the disagreements that follow can provoke bitter conflict, with significant financial ramifications.



Joan Rivers with Spike © Alamy

Doug Woodham, founder of Art Fiduciary Advisors in New York and a former president of Christie's for the Americas, says the dilemmas facing the wealthy over art legacies typically stem from the fact that heirs will feel much less passionately about the works than the collector who amassed them. A finite number of options are available, he says.

“A collector can either gift, donate or sell in their lifetime, or wait till they pass away and then gift, donate or sell posthumously. That’s their set of choices — and each, at least in the US, comes with complex tax and finance issues,” says Woodham. “They have to sort through that and decide both emotionally and financially what’s sensible to do.”

Such questions have become more urgent for wealthy collectors in recent years, as international demand for the finest works of art has soared and prices of Bacons, Picassos and Pollocks have rocketed. While a seasoned collector might be comfortable with having a \$10m painting hanging on their wall, the same cannot always be said of their heirs, who might have neither the lifestyle nor desire to live alongside such an expensive item.

Collectors who agree long-term loans of art to museums or galleries might find later in life that those pieces can account for the lion's share of their estate, depending on how much they appreciate in value relative to other assets. "At the point that a painting is loaned to an institution, that family might be in the prime of their business success. A generation later, that business may have gone or is in decline. All of a sudden that painting is worth a multiple of what the business is worth," explains Steven Kettle, a partner at the multi-family office of Stonehage Fleming.

The values on offer in the market can overwhelm any scruples heirs might feel about going against their deceased relative's wishes, prompting them to withdraw the work from public loan and put it up for sale.



Spike's silver Tiffany bowl © AP

A notable example of art-related family friction emerged in 2012, when Baroness Carmen "Tita" Thyssen, widow of Swiss billionaire Baron Hans Heinrich Thyssen-Bornemisza and a former Miss Spain, sold John Constable's "The Lock" at auction for £22.4m — one of the highest prices paid for a British artist. The work had previously hung on the walls of the Thyssen-Bornemisza Museum in

Madrid, one of several hundred lent by the baroness. However, she decided to sell it to raise cash, telling Spanish newspaper *El País*: “I have no liquidity.”

The sale of the work sparked strong opposition from the baroness’s stepdaughter, Francesca von Habsburg, who complained to UK newspaper *the Mail on Sunday* that her stepmother was “simply putting her own financial needs above everything else”.

Some draw a distinction between the tensions that tend to crop up in dynastic families where wealth and art has been around for decades, and those of the newly rich, who are often self-made entrepreneurs who have acquired works only in recent years.

Harriet Clapham, a private art adviser, says she sees few situations where families are riven by infighting over the future of bequeathed art. “That’s perhaps a function of the fact that today’s art market is dominated by people who have made their money themselves, whereas these difficulties are more common in families with dynastic wealth,” she says. “If the money has been made by the first generation, it’s just a different relationship.”

So how can a collector ensure their wishes are carried out or forestall family conflicts after their death? A common option is to take the decision out of the sole hands of the family by placing an art collection in trust, with a collector’s wishes built into the agreement in law and trustees appointed not only from the family but from independent advisers with nothing to gain from a transaction taking place.

Many collectors like to seal their legacy by making a permanent loan or gift of much-loved works to a museum. David Rockefeller, grandson of the oil magnate John D. Rockefeller, donated masterpieces by Matisse, Braque, Picasso and Bonnard, among others, to the Museum of Modern Art in New York – as well as \$300m pledged in his lifetime.

Yet children can renege on such agreements if they are not adequately protected by trusts or other legal safeguards after a collector's death. One way of "child-proofing" loans is for a museum to make and record commitments related to the loan before the donor's death. It might, for instance, agree not to collect works in a particular category in anticipation of the loan arriving, or spend significant sums renovating a gallery in preparation for the collection's arrival.

"As soon as the museum starts making commitments during the collector's lifetime, those generally create contract law provisions that enable the museum to enforce that agreement if, for whatever reason, the heirs try and back out of it," says Woodham.

Such loans can nonetheless create animosity in families who find a large part of their capital tied up in a gallery and are saddled with an agreement that requires them to pay for it. If the family name is inscribed over a gallery or wing, that might also sit badly with those for whom personal privacy is of the utmost importance.

Regardless of the legal structures put in place to preserve a legacy, advisers agree that the key to avoiding a bust-up after a death — and for a collector to ensure their wishes are respected — is to have candid discussions around estate planning among family members well before the reading of the will.

"No one likes to think about what happens after they die. But an open discussion is really the best way," says Emily Osborne, a private wealth partner at Stephenson Harwood. "Ideally you'd document that, and it would set out what happens to the art. It has to be open and frank."

Kettle says a "multi-layered approach" can ease the strains of passing on art. In one common scenario, each heir is invited to choose a single painting or sculpture from a collection, something that carries a particular meaning for them or which they can sell if they prefer. The best remaining works might be loaned or offered to institutions, while the rest can be sold off in the art market.

Sometimes heirs then choose to use the proceeds to fund a good cause.

Yet heirs can be prey to the siren voices of art market professionals with a stake in seeing a work put up for sale. Kettle once saw an irreplaceable early-20th-century masterpiece sold from one collection in order to buy a handful of questionable contemporary works. "They ripped the heart out of the collection," he says.

Still, such courtship has its advantages for those who like the attention. Invitations to glamorous parties or private events will flow in, museums will provide special access to curators and auction houses may offer free valuations or woo other family members with expert talks and evenings.

Woodham says some collectors relish being the object of desire and conceal their true intentions to sustain that status as long as possible. “As soon as you announce publicly what’s going to happen to your collection, your dance card’s going to be less full,” he says. “Some collectors dangle the opportunity for donations and sales to various market participants to see what happens. They may continue doing that long after they’ve decided what they’re going to do.”

Copyright The Financial Times Limited 2019. All rights reserved.