



LINE OF SIGHT

MAKING CHARITABLE GIFTS OF ART A PRIMER FOR DONORS

INTRODUCTION

The United States is consistently the most charitable nation in the world. Americans give more, as a percentage of Gross Domestic Product, than any other nation.¹ For many Americans, charitable giving is as simple as sending a gift in the form of cash, a check or a credit card payment to a favorite charitable organization. However, Americans also contribute a substantial amount of non-cash assets to charity each year in various forms, such as stock, real estate and art.²

While writing a check or making a credit card donation is relatively easy, making a charitable gift of art can be far more complicated and challenging. Charitable gifts of art can present complex legal and tax questions. The purpose of this paper is to address some of the tax laws that govern gifts of art and offer planning considerations for individuals who are considering making such a gift. Additionally, the paper will offer suggestions for how philanthropists can work with charitable organizations and advisors to facilitate gifts of art.

¹ World Bank "World Development Indicators Report" from 2006 ranks the U.S. as the most charitable by percentage of Gross Domestic Product (1.7%), followed by Canada and the United Kingdom (0.73% each).

² The term "art" encompasses a wide variety of objects, including, but not limited to, paintings, sculptures, photographs, prints, and drawings. For the purposes of this paper, the term "art" does not include copyright interests.

July 29, 2013

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NON-CASH WEALTH AND GIVING IN THE UNITED STATES

Overview

The estimated net worth of all U.S. households at the end of March 2013 was an impressive \$70.3 trillion.³ As one would imagine, much of America's net worth is attributable to non-cash assets, such as real estate, securities, insurance and personal property, including art.⁴ In fact, the Federal Reserve estimates that Americans owned \$879 billion in "miscellaneous assets" (which includes art, jewelry and collectibles) at the end of March 2013.⁵

Given the vast wealth in America that is held in the form of non-cash assets, it is no surprise that individuals contribute significant amounts of non-cash assets to charity each year. In 2009, the last year in which information is available, nearly 22 million individuals in the U.S. claimed charitable deductions for non-cash charitable contributions totaling \$31.8 billion.⁶ Out of this total, 6.7 million taxpayers reported deductions totaling \$28 billion on the IRS Form 8283, the form used for deductions relating to non-cash donations in excess of \$500.⁷

As the statistics from the IRS suggest, non-cash charitable gifts are an important and popular way for Americans to fund their charitable goals. While there is a long history of charitable gifts of art and collectibles to museums, cultural institutions and other nonprofits, would-be donors should be careful to understand the tax rules that govern charitable gifts of art. The tax rules governing gifts of art are highly technical and, in some cases, confusing. For example, a donor's decision to donate a piece of art that was gifted to the donor instead of a piece that the donor purchased may affect the deductibility of the donor's gift. While this paper provides an overview of the tax laws governing charitable gifts of art, donors are advised to work with experienced advisors and legal counsel before making a charitable gift of art.

GIFTS OF ART – TAX RULES

Gifts of art make up a significant portion of the total non-cash donations made each year. Generally speaking, when an individual makes a charitable gift of art, he/she may be eligible to receive an income tax charitable deduction for the contributed item. However, the amount of the deduction is determined by many factors, including the legal status of the recipient organization, how the contributed property will be used by the recipient organization and who created the contributed item. This section will address some basic issues pertaining to donated art and provide useful answers and guidelines for potential donors and donees.

Is the Art Capital Gain Property or Income Property?

It is important for a potential donor of artwork to determine if a piece of art is capital gain property or ordinary income property, as the difference can significantly alter the tax treatment of the contributed item. Understanding the differences in the tax rules may also help a potential donor decide whether to make the charitable gift during his/her life or at his/her death.

³ United States Federal Reserve Balance Sheet of Households and Nonprofit Organizations (June 6, 2013)

⁴ United States Federal Reserve Balance Sheet of Households and Nonprofit Organizations (June 6, 2013)

⁵ United States Federal Reserve Balance Sheet of Households and Nonprofit Organizations (June 6, 2013)

⁶ Internal Revenue Service Statistics of Income Bulletin, Spring 2012

⁷ Internal Revenue Service Statistics of Income Bulletin, Spring 2012

Capital Gain Property

In most cases, works of art are considered capital gain property. The Internal Revenue Code (the Code) defines capital gain property as “any capital asset the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long-term capital gain.”⁸ Put another way, the owner of the art must have held the art for more than one year, the work of art must qualify as a capital asset, the art must have appreciated in value and the art must be a “collectible” as defined by the Code.⁹

As we will discuss in more depth below, donated capital gain property receives a more favorable tax treatment compared to donated ordinary income property.

Ordinary Income Property

Art is considered ordinary income property if it was: 1) created by the donor; 2) received by the donor as a gift from the creator; 3) held as inventory by an art dealer; or 4) owned for one year or less at the time it is donated.¹⁰ Thus, when the creator of artwork sells his/her work, that work is subject to tax at the ordinary income rate and is not considered capital gain property.

For art that is ordinary income property, the tax cost basis is limited to the cost of the materials used to create the work.¹¹ If an artist gifts artwork to an individual and the recipient of the art later sells the gifted art, the seller shares the artist’s basis and the sale is subject to ordinary income tax.¹² Gifted art will remain ordinary income property (and will carry the artist’s basis in the piece) until the piece is sold or until the recipient dies, and at that time there is a “step-up” in basis for the artwork.¹³

How Will the Contributed Art/Collectible Be Used?

In order to determine the income tax charitable deduction for a contribution of art, a donor must determine whether or not the recipient organization is a public charity or a private operating foundation, and if the organization will use the donated property in a way that relates to the organization’s charitable mission. This inquiry is vital, as it can significantly affect the amount of charitable deduction that the donor may claim. This rule is sometimes referred to as the “related use” test or rule.¹⁴

The U.S. Treasury Regulations state that contributed capital gain property meets the related use test if: 1) the donor establishes that the property is not in fact put to an unrelated use by the donee organization; or 2) at the time of the contribution, it is reasonable to anticipate that the property will not be put to an unrelated use by the donee organization.¹⁵ If the recipient organization uses the donated art in a way that relates to the organization’s charitable mission, then the deduction will be based on the fair market value¹⁶ of the contributed item.¹⁷ If the contributed item does not relate to the recipient

⁸ IRC §170(b)(1)(C)(iv)

⁹ IRS Publication 526

¹⁰ IRC §§ 1221(d), 170(e)(1)(A); Treas. Reg. §§ 1.170A-8(d)(3), 1.170A-4(b)(2)

¹¹ Section 170(e)(1)(A). Regs 1.170A-4(b)(1) defines “ordinary income property” to include “property held by the donor primarily for sale to customers in the ordinary course of his trade or business, a work of art created by the donor, a manuscript prepared by the donor, and letters and memorandums prepared by or for the donor.”

¹² IRC § 1221(a)(3)(C)

¹³ IRC § 1014(a). A “step-up” in basis is the readjustment of the value of an appreciated asset for tax purposes upon inheritance. With a step-up in basis, the value of the asset is determined to be the higher market value of the asset at the time of inheritance, not the value at which the original party purchased the asset.

¹⁴ Treas. Reg. § 1.170A-4(b)(3) provides a general definition on “unrelated use” and various authors and experts in the field of charitable giving have used the language of Treas. Reg. § 1.170A-4(b)(3) to describe when a contributed work of art is put to a related use by the recipient organization.

¹⁵ Treas. Reg. § 170A-4(b)(3)(ii)

organization's charitable purpose or function, then the deduction will be decreased by any capital appreciation in the object (meaning the deduction will be limited to the cost basis).¹⁸

While the regulations provide some guidance on when a donor can expect a contribution to meet the related use test, real-life scenarios are not always obvious. For example, a donor who gifts a rare Pablo Picasso print to a fine arts museum will likely meet the related use test, even if the museum does not intend to display the print in the near future. However, if that same donor contributes the Picasso print to a local conservation organization to be displayed in its offices, the deduction will likely be limited to the donor's basis in the print because displaying a print is not related to the charitable mission of the conservation organization.

It should be noted that if the donor is also the creator of the donated artwork, the tax rules are different. If the donor is also the artist, then the deduction is limited to the cost basis of the item (meaning the cost of the materials used to create the item). Further, if the donor-artist claimed a business deduction for the item in the tax year in which it was created, then the donor-artist is prohibited from claiming an income tax charitable deduction for donating the item.¹⁹

What Type of Organization is Receiving the Donation?

A donor's income tax charitable deduction depends, in part, on the legal status of the recipient organization. U.S. tax law provides a more favorable income tax charitable deduction for contributions of art to public charities and private operating foundations.²⁰ Generally, a donor may deduct up to 50% of his/her adjusted gross income (AGI) for charitable contributions of non-cash assets, including art, if the donor deducts his/her basis in the contributed item (and if the related use test is met for gifts of art).²¹ If the donor contributes art to a public charity or a private operating foundation, the donor may elect to deduct the fair market value of the contributed art. In this case, however, the donor's deduction will be limited to 30% of AGI.²²

Tax laws treat charitable contributions to private non-operating foundations less favorably than contributions to public charities and private operating foundations. For contributions of art (where the art is capital gain property) to a private foundation, the deduction is generally limited to 20% of the taxpayer's AGI, and the deductible amount is the donor's basis in the contributed property.²³ For contributions of art (where the art is ordinary income property) to a private foundation, the charitable deduction generally is limited to 30% of the taxpayer's AGI, and the deductible amount is the donor's basis in the contributed property.²⁴

If a donor is not able to use all of his/her income tax charitable deduction in a given year, the donor may elect to carry any unused portion of the deduction forward for five years.²⁵

¹⁸ Fair market value is defined as the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. Treas. Reg. § 1.170A-1(C)(2).

¹⁹ IRC § 170(e)(1)(B)(i); Treas. Reg. § 1.170A-4(b)(3).

²⁰ IRC § 170(e)(1)(B)(i).

²¹ See Treas. Reg. § 1.170A-1(c)(4), example 4.

²² IRC § 170(b).

²³ IRC § 170(b)(1)(C)(iii).

²⁴ IRC § 170(b)(1)(C)(i).

²⁵ IRC § 170(b)(1)(C)(i), (e)(1)(B)(ii).

²⁶ IRC § 170(b)(1)(B).

²⁷ IRC § 170(d)(1)(A).

The "Related Use" Test – A Question of Fact or the Art of Spin?

As discussed previously, in order for a donor to obtain a fair market value deduction for a gift of art, the use of the item by the donee must be related to its charitable mission. But how does the IRS decide if the use of donated art is, in fact, related to the charitable organization's mission? Ultimately, the question turns on the facts and circumstances of a given case. But with few litigated cases, donors may be left to best guesses in some instances.

The IRS has weighed in on the related use test in a small number of Private Letter Rulings (PLR), including the following:

- In PLR 8143029: The IRS found that the "related use" test was met when a donor gave a collection of porcelain art to a public charity that operated a retirement home, since the display of the art was related to the charity's exempt purpose of creating a comfortable living environment for its residents.
- PLR 8009027: The "related use" test was not satisfied where a donor gave an antique car to a university. The donor was unable to establish that the car had been put to a related use, such as in a course on antique car restoration.
- PLR 7751044: The "related use" test was met when lithographs were donated to, and displayed by, a camp for physically and mentally disabled children, where the lithographs were used in connection with an art appreciation program.

As the aforementioned examples demonstrate, predicting when the IRS will find that a gift of art meets the related use test is not always clear. For donors who are concerned about running afoul of the related use rules, one option is to obtain a written determination from the IRS in the form of a Private Letter Ruling (PLR) in advance of the donation. It is important to note that obtaining a PLR is an expensive and time-consuming process, and thus may not be worth the investment unless the artwork in question is a significant piece. Further, PLRs are not binding precedence, only relate to the taxpayer in question and should not be relied upon by other taxpayers.

What Happens if the Donee Organization Sells a Work of Art After it is Contributed?

Suppose that a donor contributes a painting to a museum that intends to hang the piece in its modern art wing. Under the rules discussed previously, the contributed art meets the related use test, and therefore the donor may elect to deduct the fair market value of the artwork (assuming the art is capital gain property). However, what happens to the donor's deduction if the museum experiences financial troubles and sells the donated artwork one year after the donor made the contribution?

If donated art has a value in excess of \$5,000 and is sold or disposed of within three years of the contribution date, the donor may run afoul of the related use rules unless the donor obtains certification from the donee organization that:

- The use of the art prior to the sale or disposition was substantially related to the organization's tax-exempt status; or
- The organization intended to use the donated art in a way that related to its tax-exempt status, but such use became impossible or infeasible.²⁶

If an organization does sell or dispose of donated art within three years of the contribution date, then the organization generally must complete IRS Form 8282. The donee organization must then provide the original donor of the artwork with a completed copy of the Form, in addition to a copy of the certification of use or intended use.

Donors of artwork can help protect the value of their charitable deduction by obtaining a certified statement from the donee organization that states the intended use of the donated artwork. While it might be reasonable for a donor to assume that a Picasso print that is donated to an art museum will be put to a related use, the donor may prefer to obtain a signed affidavit from the museum in advance of the contribution that confirms the contributed artwork will be put to a related use.

WHAT IF THE DONOR WISHES TO MAKE A FRACTIONAL GIFT OF ART?

Suppose the owner of a Monet watercolor wants to give a partial interest of the artwork to a local museum – is this permissible under the Code? Generally speaking, a donor may make a fractional gift of art to a charitable organization. However, the rules governing fractional gifts of art are complicated, and potential donors are advised to work with experienced advisors who understand the rules.

Deductibility Rules

A donor may make a fractional gift of art if, immediately before the contribution, the art is owned entirely by the donor or by the donor and the recipient charity.²⁷ Assuming all rules are met, a donor who makes a fractional gift of art may be eligible for an income tax charitable deduction equal to the fair market value of the art multiplied by the fractional interest donated.²⁸ For example, if a donor contributes a 50% interest in a painting worth \$100,000 to a local museum, then the donor would be eligible for an income tax charitable deduction of \$50,000.

Suppose in the example above that the donor is ready to donate the remaining 50% interest in the art five years after the initial fractional gift, and during the five years the painting's value has increased to \$250,000. Can the donor claim a \$125,000 charitable deduction for the remaining fractional interest? The answer is "no." Section 170(o) of the Code limits the value of subsequent fractional interest gifts of art to charity to the percentage of the art given multiplied by the smaller of: 1) the fair market value of the art valued at the date of the initial installment gift; or 2) the fair market value of the art at the time of the additional contribution.²⁹ Therefore, the donor in the example is limited to a deduction of \$50,000 for the remaining 50% interest in the artwork gifted to the museum.

²⁶ IRC §170(e)(7)

²⁷ IRC §170(e)(1)(A). For example, if a work of art is owned equally by a brother and sister, the brother generally cannot make a fractional gift of art to a museum because the sister owns a fifty percent stake in the art. An exception does exist, however, in cases where all owners of a piece of art make proportional contributions.

²⁸ See IRS Rev. Rul. 57-293

²⁹ IRC §170(e)(2)

Timing and Use Rules

Donors of fractional gifts of art must also follow strict timing and use rules. An individual who donates a fractional interest in a work of art must donate the entire interest in the work before the earlier of: 1) 10 years after the initial contribution; or 2) the date of the donor's death.³⁰ Additionally, the recipient charitable organization must have "substantial physical possession of the property" and must comply with the related use rules, discussed previously.³¹ Neither the Code, nor the Treasury Regulations, provides clear guidance on how a donor and recipient organization can satisfy the substantial physical possession requirement. The lack of clear rules governing the requirement means that donors and their intended charitable beneficiaries should act cautiously when arranging for gifts of fractional interest in art.

A failure to comply with the timing and use rules may result in a recapture of the entire charitable deduction received by the donor for the fractional gift plus interest.³² The term recapture means that a donor of a fractional gift may lose the entire value of any charitable deduction related to the fractional gift if the donor does not follow the timing and use rules. If recapture occurs, the Code also imposes an additional tax in the amount of 10% of the amount recaptured.³³

Potential donors and recipient charitable organizations should work with experienced professionals – including attorneys, appraisers, valuation specialists and financial planners – when planning and completing such gifts.

Fractional Gifts of Art

Given the restrictive rules relating to fractional interest gifts of art, one might wonder why a donor would want to go through the trouble of making a fractional gift. For some donors, the trouble is worthwhile. As an example, consider Dan and Marlene Jones, an older couple that lives in Minneapolis, Minnesota eight months out of each year and in West Palm Beach, Florida the remaining four months out of each year. The Jones own a very valuable painting that they display in their Florida condo. The Jones may choose to make a fractional gift of the painting to a museum in West Palm Beach, whereby the museum keeps the painting during the eight months of the year when the Jones are in Minneapolis. The Jones have peace of mind knowing the painting is secure in the museum while they are in Minneapolis, and they get to display the art at their condo during the four months each year when they are living in West Palm Beach. Assuming they comply with all the requirements, a fractional gift of art may be a worthwhile endeavor for a couple like the Jones.

³⁰ IRC §170(e)(3)(A)(i)

³¹ IRC §170(e)(3)(A)(ii)

³² IRC §170(e)(3)(A)

³³ IRC §170(e)(3)(B)

WORKING WITH NONPROFIT ORGANIZATIONS

Once a donor decides that he/she is ready to donate a work of art, it is important to start a dialogue with the grantee organization about the details of the gift. A poorly worded gift agreement, or a misunderstanding about who will fund the upkeep³⁴ of donated art, may result in unintended and unwanted consequences at a later date. Before any art exchanges hands, we suggest donors and recipient organizations heed the following planning considerations.

Obtain a Qualified Appraisal

Valuing artwork can be a difficult task, in large part because of the subjective nature of art. However, a proper valuation is crucial for charitable gifts of art (either during life or at death) in order to substantiate a charitable deduction. In obtaining a proper valuation, it is important to work with a professional appraiser who can ensure the appraisal contains all of the necessary information, as required by the U.S. Treasury Regulations.

The Treasury Regulations articulate clear requirements that an appraisal must meet in order to be a “qualified appraisal.” For any contributed work of art valued in excess of \$5,000, the donor must obtain a qualified appraisal, from a “qualified appraiser,” made within 60 days of the contribution date.³⁵ A qualified appraiser must be an individual who holds himself or herself out to the public as an appraiser or performs appraisals on a regular basis and is qualified to make appraisals of the type of property being valued.³⁶ Thus, an appraiser who specializes in Chinese pottery from the thirteenth century may not be qualified to appraise a Monet watercolor under the guidance provided by the Treasury Regulations.³⁷

Further, a qualified appraiser must be fully independent of the donor, meaning the appraiser cannot be the donor, a party to the transaction in which the donor acquired the artwork (e.g., an employee of the gallery that sold the artwork to the donor) or anyone “related to” the donor, as defined by the Treasury Regulations. Further, if the donor has any information that would lead him/her to believe that the appraiser would falsely state the value of the contributed artwork, then that appraiser is not qualified. This requirement thus prevents the donor and the appraiser from deciding on an inflated price in advance of the appraisal. The Pension Protection Act of 2006 also speaks to qualified appraisers, noting that a qualified appraiser must have a designation from a recognized appraiser organization and must not have been banned from practicing before the IRS at any time during the three-year period ending on the appraisal date.³⁸

The appraisal itself must contain certain information in order for it to be a qualified appraisal. Some, but not all, of the required information includes:

- A description of the artwork;
- The expected donation date;
- Identifying information about the appraiser (including name and address);
- The date on which the artwork was appraised; and
- The appraised fair market value of the artwork.³⁹

³⁴ Maintaining and/or storing donated art can be expensive. For instance, a museum that receives a donated work of art may have to spend money to store the work in an environment that maintains specific levels of light, moisture, etc. Additionally, museums often insure works of art in case of fire, theft or damage.

³⁵ Treas. Reg. §1.170A-13(c)

³⁶ Treas. Reg. §1.170A-13(c)(5)(i)

³⁷ Treas. Reg. §1.170A-13(c)(5)(iv)(F)

³⁸ IRC § 170(f)(1)(E)(ii)-(iii)

³⁹ Treas. Reg. §1.170A-13(c)(3)

After obtaining a qualified appraisal, the donor must complete IRS Form 8283, which is required for all non-cash contributions in excess of \$5,000. A copy of the signed qualified appraisal must be attached to Form 8283, and both the qualified appraiser and the recipient organization must sign and date Form 8283 in order for it to be valid. As the instructions to Form 8283 explain, the person from the recipient organization acknowledging the gift must be an official authorized to sign the tax returns of the organization or a person specifically designated to sign Form 8283.

Donors of artwork must conduct their due diligence to select a legitimate, qualified appraiser, as the consequences for failing to do so can be severe, including loss of the entire charitable deduction and/or fines.⁴⁰

Who Should Pay for the Appraisal?

A common question that we hear from clients and nonprofit organizations is, "Who should pay for an appraisal?" While there is no requirement under the Code as to who must pay for the appraisal, we commonly advise clients that the donor should pay for a qualified appraisal. Ultimately, the donor needs the appraisal in order to substantiate the value of the contributed art for the purposes of claiming a charitable deduction. Further, if a charitable organization pays for an appraisal and the donor does not end up contributing the artwork, then the organization bears the financial burden of the donor's decision.

Work with Counsel to Draft a Gift Agreement

Gift agreements are quite common in the world of charitable giving, especially for large and/or complex gifts. While gift agreement templates are easy to find online, it is often worth the time and expense to work with counsel to develop a tailored gift agreement that reflects the goals and expectations of both the donor and the recipient organizations. Recent examples demonstrate the serious, albeit unintended, consequences that may result from gift agreements that are not drafted with a long-term perspective.

Take the example of Georgia O'Keeffe's donation of more than 100 works of art to Fisk University in 1949. The donation included a stipulation that the collection never be sold or broken up. Fisk University later experienced financial difficulties and tried to sell part of the collection to generate revenue. The Georgia O'Keeffe Museum went to court in an effort to reclaim the entire collection from Fisk University, arguing that the university violated the terms of O'Keeffe's gift. In its legal argument, Fisk University claimed that the school could not afford the annual costs associated with displaying the collection and might have to close the university if a sale did not occur. After more than five years of legal wrangling – with associated legal costs – a court permitted Fisk University to sell a 50% stake in its Georgia O'Keeffe collection to the Crystal Bridges Museum in Bentonville, Arkansas. In exchange for giving Fisk \$30 million, Crystal Bridges can display the collection two out of every four years and will have a right of first refusal should the rest of the collection ever come up for sale.⁴¹

⁴⁰ IRC §6662(e), (h)

⁴¹ Kennedy, Randy. "Legal Battle Over Fisk University Art Collection Ends." *New York Times*, August 3, 2012.

In hindsight, it is impossible to say whether Georgia O'Keefe would have removed or altered the no-sale stipulation in her gift to Fisk given the legal battle that would ultimately embroil the collection. However, there is an opportunity for living art collectors and potential donors of artwork to think about how they put restrictions on gifts of art. Potential donors may want to brainstorm scenarios like the O'Keefe collection controversy with their advisors and attorneys and then talk through the donor's desired outcomes. Additionally, potential donors should not hesitate to include representatives from donee organizations in the development of gift agreements so that donors and their advisors can consider the perspective of the donee organization when developing a gift agreement.

Develop a "Statement of Intent" for Your Contribution

An additional suggestion for donors and donees working together on a gift agreement is to include a statement of intent by the donor in the gift agreement. Statements of intent recently have been promoted by some in the estate planning field as a way for individuals to clearly state their hopes and expectations in wealth transfer instruments.⁴² A statement of intent allows future generations to read and understand what previous generations intended to achieve through a transfer of assets, either during life or at death. A statement of intent could also be useful for philanthropists who fund their charitable giving with art, as the statement would allow the donor to express his/her charitable goals in a clear, personal tone. Further, sharing the statement of intent with the donee organization in advance of the gift agreement being executed can help both parties discuss the donor's expectations and whether or not those expectations are feasible or appropriate. Finally, a statement of intent may be helpful to donee organizations to guard against legal challenges by a donor's descendants because the organization will have evidence of the donor's wishes and expectations articulated in writing to justify the use of a donated work of art after the donor's death.

Consider Funding an Endowment

As the Fisk University example demonstrates, unexpected and unwanted consequences may result when a recipient organization lacks the financial capacity to manage and maintain a donated collection of art. One way to mitigate the potential long-term financial strain associated with managing donated art is to fund an endowment, the income and principal of which could be used to cover the cost associated with the donated artwork. Donors of artwork can work with their advisors and the recipient organization to develop a financial cost estimate for managing a donation of artwork over a period of time. For instance, a donor may wish to fund an endowment to maintain donated artwork for 30 years after the art is donated. Or, a donor may wish to fund a life insurance policy with the recipient organization as the beneficiary to help cover the cost of an endowment.

An endowment can serve multiple purposes. First, the recipient organization may use the funds as a way to inspire other donors to support the organization and/or the specific donated artwork (for example, through a matching gift initiative). Second, it may help the donor and the donee organization develop a realistic gift agreement that sets appropriate expectations for both parties. If a donor thinks that a \$2 million endowment will support

⁴² See Odom, Raymond. "Statements of Wealth Transfer Intent." *Trusts & Estates* (May 2012).

a donated collection of art for 30 years, but the organization knows from experience that the endowment will only last for eight years, both parties will benefit from an upfront conversation about an endowment gift and hopefully avoid unwanted litigation in later years. The parties may even wish to incorporate a financial analysis of an endowment's longevity into the gift agreement for posterity and as a way to stave off potential court challenges like the Fisk University-O'Keefe example.

Even if a donor chooses not to fund an endowment to accompany a gift of art, it is a wise idea for the donor and donee organization to have a conversation about the long-term costs of maintaining donated artwork. Often, a donor may not understand the totality of the costs associated with managing a gift of art, such as storage, insurance and transportation costs. As previously noted, having a conversation in advance of the donation will help both parties set expectations.

Include Family Members in Your Planning

Another strategy that can help provide peace of mind to a donor of art – and possibly the recipient charitable organization – is to include family members in the planning stage. For some donors, there may be reservations about whether to donate a work of art to charity or transfer ownership to family members. While one generation may love the irreverent style of Lichtenstein's early works, subsequent generations may not share in that appreciation. An early conversation between generations may help clear up preferences and expectations.

Further, we recommend including potential charitable recipients in the family philanthropy planning conversations, when appropriate. If a family and the intended beneficiary organization can all sit down at the table together, it again helps all parties understand the intent of the donor(s), and the expectations of the donee organization. An early, inclusive conversation about charitable planning with art may clear up confusion in the short term and avoid unwanted and unnecessary conflict or litigation in the long term.

CONCLUSION

Given the significant amount of wealth held in the form of art, there is great potential for many individuals to achieve their philanthropic goals using gifts of art. However, as this paper explains, potential donors – and their intended charitable beneficiaries – should be sure they understand the many rules that pertain to gifting works of art before proceeding. Donors are advised to work with qualified legal and financial advisors, and to have an open conversation with family members and the intended recipient organization, to help ensure all parties understand and participate in the process. For philanthropic individuals wishing to create more impact with their resources, making charitable gifts of art offers tremendous opportunity to create a lasting legacy.

FOR MORE INFORMATION

Northern Trust can help you create a wealth transfer plan that supports your philanthropic giving strategy and allows you to enjoy the personal and financial benefits of giving. To learn more, please visit [\[REDACTED\]](#)

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