

ART IN TRUSTS

CAYMAN ISLANDS

Down to a Fine Art: Practical Tips For Holding Collectibles In Trusts

Acquiring artworks, antiques, and other collectibles is a common pastime of private clients, for reasons that can vary greatly from profit-making to maintaining cultural ties, or simply as a general reflection of their interests. It is also a pastime that is on the rise: having weathered global financial crises in recent times, and perhaps anticipating market volatility in the future, many private clients are increasingly looking to invest in “real assets” that are known to maintain or increase in value in the long term. Art very much fits that profile and, with trusts being a favoured vehicle in which to hold such assets, trustees are more frequently being asked to acquire and manage artworks as part of their trusteeship.

Art as a trust asset

Most commonly, artworks forming part of the assets of a trust comprise a well-established family art collection, with the trust itself having been established to protect and preserve that collection for the enjoyment of future generations of the family. However, in modern times, trustees may be required by the terms of the trust deed to do more than simply hold and protect family artworks: trustees may have duties to actively build an art collection for the benefit of the beneficiaries of the trust, they may be asked to manage artworks for philanthropic purposes, or they may find themselves appointed as trustee of a trust, established with the express objective to invest in an emerging artist in order to fund and promote further works.

Type of trust structure

From a Cayman Islands perspective, the most effective trust structures used solely for holding and actively administering and managing artworks in accordance with the settlor’s objectives are STAR trusts and reserved powers trusts. The trust deeds for both forms of trust structure can be tailored to offer the settlor greater involvement in the succession planning process, and to carefully prescribe arrangements for the management of the particular categories of artworks settled on the trust. Practically speaking, housing artworks in a trust can also allow for a clear and easier administration and management process: provisions can be included to allow for the trustee to delegate tasks to specialist advisors or curators who can make the necessary arrangements for matters such as transportation, insurance, storage, and display or exhibition of the artworks.



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Considerations for a trustee

There are a number of important considerations for trustees who are tasked with administering a trust which has, or is to have, artworks included as part of its corpus:

- Issues often arise as to ownership of artworks, the trustee should obtain evidence to confirm that the transferor has legal title to the artworks before arrangements are made for them to be transferred into the trust.
- Before transfer, the trustee should also ensure the authenticity and provenance of the artworks, including by confirming, with the assistance of specialists, the identity of the artist and that the artworks are original pieces.
- Consideration should be given to whether there are any legal or taxation considerations for the transferor of the artworks at the time of transferring the artworks into the trust, such as gift taxes. As there are no taxes of this nature in the Cayman Islands, no such issues will arise locally but it would be prudent for the transferor to take domestic advice.
- The trustee and its advisors should prepare and execute all necessary documentation to give effect to the change in ownership of the artworks (from transferor to trustee), and ensure that suitable insurance has been obtained from a specialist insurer (and security for the physical protection of the artworks, if necessary) with effect from the date of transfer.
- The trustee should also take care to ensure that sufficient funds are maintained in the trust structure to meet the ongoing costs relating to the artworks, as well as professional fees charged by specialists, insurers, and other parties involved in protecting and managing the artworks.
- From time to time, the trustee may be asked to make a decision about where the artworks will be kept (for example, at the residence of a beneficiary or loaned out to a museum). If the artworks are to be moved from its current location after execution of the transfer documentation or at any later stage, the trustee will also need to attend to careful shipment by fine art shippers, as necessary. The trustee should at all times keep clear and careful records of the location of the artworks, have arrangements in place to inspect them from time to time, and ensure that any third party holding the artworks understands that the trustee remains the legal owner in its capacity as trustee of the trust.
- The trustee should also take clear instructions from the settlor as to his or her wishes regarding whether the artworks can or should be sold in the future (if so, at what time and in what price range) or preserved for the enjoyment of the family.

While managing artworks as trust assets can seem a daunting task for a trustee more used to 'run of the mill' assets such as cash and shares, with careful attention and the assistance of specialist advisors, the risks can be greatly minimised and the settlor's legacy preserved.

Speak to our experts

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