

THE ART OF RISK MANAGEMENT

THE WEALTHY art collector waving a paddle in a multi-million dollar auction and the novice buying his first painting are united by more than just their passion for art. Both would be chilled to the core to hear the words “just because you paid for it doesn’t mean you own it.”

Welcome to the art world and its growing number of ownership disputes, one of the most pressing issues in today’s art market. Fortunately there is a safe harbor for both buyers and sellers: art title insurance.

Introduced in 2006 by ARIS Title Insurance Corporation, an art title policy offers simple and straightforward benefits for a low one-time premium. First, if your title is challenged the insurance company, which has in-depth knowledge of art law, will defend you—if necessary hiring the best lawyers at no cost to you. Second, if the defense is unsuccessful and you lose title, the insurance company will pay you the entire insured value of the art work.

Furthermore, while providing these needed benefits, ARIS preserves the confidentiality conventions of the art world that are so important to collectors. Both seller and buyer can remain anonymous if they so desire. ARIS, as a neutral party situated between buyer and seller, requires that the parties identify themselves to ARIS, which keeps identities confidential both from the other side of the transaction as well as the outside world.

Pioneers in the field of art title insurance, ARIS was launched in 2006 to address the art market’s increasing need for effective management of title risk. It is still the only existing underwriter providing title insurance for fine art and tangible personal property, including artifacts, manuscripts, and musical in-

struments. The policy provides coverage for the life of ownership, including transfers to legal heirs.

The significant increase in title disputes in recent years has impacted not only buyers and sellers but every part of the market: legal and financial advisors, institutions, trustees, banks lending against art, and property insurers. “Over the past year,” says ARIS cofounder and chairman Lawrence M. Shindell, “we’ve begun to receive calls with questions such as, ‘We’re not sure we can write the property insurance without guaranteed ownership, because it falls under the category of insurable interest.’ Five years ago you never heard anyone ask that question. In other cases, we are seeing property insurers deny loss payments until the question of ownership is resolved, something unheard of just a few years ago.”

And if you thought you could find peace of mind from dealers with sterling reputations, think again: these days no sale is foolproof. Recent headlines involving some of the nation’s most prestigious art dealers have thrown into question the entire notion of implicit trust. “People in every sector of the market have come to understand that there’s no such thing as buying from the best and being fully protected in quite the same way that title insurance offers protection,” says Shindell. “If the view that you can buy from the best with security could provide full protection, and you could navigate the legal title issues through traditional notions of due diligence, then the kinds of title claims that occur in the market would not occur. But they do occur, and therefore art market due diligence alone doesn’t fully manage the title risk. The only way to guarantee ownership is

through a third-party title insurer that’s actually taking the economic risk.”

Here’s an example of how it works. Once a buyer and gallery reach a deal, the buyer contacts ARIS before the transaction takes place. A policy is written, with a typical turnaround time of two weeks. In the case of auctions, most of the application and underwriting can be completed before bidding begins. The cost is one to three percent of the value of the work of art at the time of purchase. “We use the purchase price for insured value in the case of transactions,” explains Judith L. Pearson, ARIS cofounder and president, “and appraisals when a person insures an owned work and in the case of a work that is being gifted or loaned to a museum.”

Confidentiality remains a perennial concern in the art market. Collectors are like stock market investors and do not wish to telegraph their intentions. “As the only true neutral third-party in the market,” says Shindell, “we understand the market’s need for confidentiality. We give the buyer some degree of control in the transaction, yet still embrace the sell-side’s need for confidentiality.”

Whether you’re spending \$25,000 on a painting or \$10 million, the amount is probably a significant investment to you. Art title insurance guarantees that a cherished work hanging above your mantelpiece is really yours. “Just like in real property, we believe that title insurance will become a part of every single art transaction,” says Pearson. “Moreover, we believe that the market will segment, with works of art that have title insurance becoming much more valuable than those without, and with some works perhaps being relegated to the black market.” ♦

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ARIS cofounders Judith L. Pearson and Lawrence M. Shindell.