



THE ART OF LENDING

Azmina Jasani frames the issues to consider before loaning art to museums

Building an esteemed art collection requires long-term commitment and meticulous research. Maintaining the integrity and value of that collection requires even more work. A critical part of maintenance involves taking strategic steps to enhance the artworks' provenance, often accomplished by lending the works to reputable museums.

In addition to increasing the artworks' value, there are numerous advantages to lending. These include sharing the viewing and appreciation of art with the general public; promoting study and scholarship of art; enjoying potential tax benefits; and saving costs on storing and conserving the art. Unfortunately, lending art is not without its risks. It is therefore critical to carry out a cost-benefit assessment before doing so.

Below is a list of helpful tips to consider before lending.

- Negotiate and enter into a well-tailored loan agreement prior to making a loan. As common-law principles of bailment do not afford sufficient protections, a loan agreement is essential. A well-documented loan agreement should:
 - define the parties;
 - specify the term of the loan;
 - provide a complete description of the artworks being lent;
 - identify who bears the burden of insuring the artworks and at what value, and of condition reporting, shipping and packing;
 - stipulate the reproduction rights being granted and how the lender should be credited;
 - confirm whether any repair and restoration rights have been granted; and
 - record the applicable law and jurisdiction clause.
- Seek current valuations and insure the artworks while on loan and in transit. The typical insurance coverage is 'nail to nail', which protects collectors from the time the artworks are removed from the wall until the time they are unpacked

and returned back to the collectors' premises. The pertinent policy must name the lender as the loss payee, and parties should agree on how claims of partial loss or of damage to the artworks will be handled.

- Carry out appropriate due diligence on the borrowing institution. Artworks can inadvertently be tarnished when lent to poorly run institutions or ones with dubious ties. Conduct up-to-date research on the borrowing institution and inspect its security protocols.
- International loans present a unique set of issues that should be carefully considered:
 - **Immunity from seizure:** before agreeing to make a foreign loan, it's important to ascertain whether the country where the museum is based has enacted appropriate anti-seizure laws, whether they afford sufficient levels of protection and whether the artwork at issue is likely to attract claims.
 - **Customs clearance:** review and seek clearance of specific customs regulations of the country where the borrowing museum is based prior to shipment.
 - **Tax:** confirm that making the loan won't render clients liable to taxes in the foreign jurisdiction where the borrowing museum is based.
 - **Government indemnity insurance:** certain institutions are entitled to make use of their government's insurance policies when borrowing objects of cultural significance for public exhibitions. Where appropriate, ask the borrowing institution to purchase its own policy to cover liabilities that may be outside the scope of a government's indemnity insurance scheme.
- Manage the packing and shipping process. The biggest risk of loss or damage to the artwork is while it is being packed, crated and transported from one location to another. It is therefore

imperative that the artworks are entrusted to reputable fine-art shippers.

- Ensure that condition reports are prepared by qualified professionals at all pertinent times. They are essential in determining the point of damage to the works and removing any uncertainty around the question.
- Specify any special conditions for the artwork's transportation, storage and exhibition. Examples include whether any direct sunlight can reach the work, the temperature and humidity levels to be maintained, and whether artificial or natural light is preferred for the artwork's environment.
- Stipulate the reproduction rights being granted. The borrowing institution may wish to obtain photographs of the loaned artworks for promotional and commercial purposes. Before any such use is made, the museum must seek permission from the owner of the artworks and, if the works are under existing copyright, permission from the copyright owner of the works (usually the artist or the artist's estate).
- Museums should not be granted the right to repair or restore the artwork without the collector's prior written consent, except in emergencies where immediate action must be taken to protect the artwork or the health and safety of the visiting public.
- Decide how to be identified. To avoid misunderstandings and potentially irreversible damage, the museum must be informed exactly how to identify the benefactor in the exhibition catalogue and label. To maintain confidentiality, many donors elect to remain anonymous. Collectors must carefully weigh the pros and cons of literally going public with their art.



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