

# The Art of Legacy Planning: Key Takeaways

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Willow Street The Fine Art Group

# The Art of Legacy Planning

In September 2022, Willow Street and The Fine Art Group hosted a panel discussion entitled, "The Art of Legacy Planning: Creating a Roadmap for a Client's Art and Collectibles." Below are key highlights from the discussion.

## CRITICAL QUESTIONS

**WHAT** are the components of the collection? E.g., Fine art, coins, rare books, cars, wine. What is its magnitude? What is the provenance and value of each piece? What is the collection's role in the collector's overall wealth planning strategy and investment portfolio?

**WHERE** is each piece located? Are they on display in a primary or secondary residence as something the family enjoys? Are they in a storage warehouse or on loan to a museum? Are they appropriately stored?

**HOW** is the collection owned and titled? Did the funding come from an individual or a trust? Is the asset's provenance accurate?

**WHY** did you acquire each piece? Are you interested in enjoying them as more personal property, or expecting them to appreciate as an asset as part of a larger diversified portfolio?

## CRITICAL CONCEPT: VALUATION

With passion assets like art and collectibles, price is not the same as value. The art market uses several different valuation methods, and understanding the differences is important:

- **RETAIL REPLACEMENT VALUE (RRV)** is the price a collector would pay for an object in a retail environment and is primarily used for risk management/insurance purposes.
- **FAIR MARKET VALUE (FMV)** is the auction sale price plus the buyer's premium. It is primarily used for estate planning purposes and by the IRS.
- **MARKETABLE CASH VALUE (MCV)** is fair market value minus the buyer's premium. It is primarily used for appraisals for family division and art as collateral.

The following approach for when to value passion assets makes sense for most collectors:

- Obtain a baseline valuation upon acquisition of an object.
- Have objects reviewed — not valued — every 1-2 years to ascertain if there has been significant movement in its relative market.
- If there has been significant movement, revalue the object.
- Note that transitions like death, divorce, or other significant life events often force valuation for a collection.

### CRITICAL CONCEPT: WEALTH PLANNING

Be as proactive as possible with wealth transfer planning — including for passion assets. Proper planning helps ensure that assets remain assets for the family and do not become liabilities.

Estate planning is a dynamic exercise: maintaining optionality to react nimbly to changes like a family's planning circumstances or investment market conditions is important.

Consider how an estate plan accounts for changes like deaths, births, potential divorces, family relocations, and the timing of the disposition of passion assets.

Common planning vehicles for passion assets include:

- **DONOR-ADVISED FUNDS (DAF):** For collectors with philanthropic goals, donating appreciated art to a DAF offers a way to give to charities of their choice while possibly receiving a charitable income tax deduction, potentially minimizing the capital gains tax that would be incurred by a sale, and removing the passion assets from the collector's estate, thereby possibly minimizing estate tax implications.
- **FAMILY LIMITED PARTNERSHIPS (FLP):** Collectors may choose to transfer passion assets — along with other assets — into an FLP so future generations may be gifted shares in the FLP instead of the art itself. Owning a minority interest in an FLP may provide valuation discounts and transferring assets out of a collector's estate into an FLP may help reduce estate tax implications.
- **TRUSTS:** Trusts offer similar benefits to FLPs in that transferring assets out of a collector's estate into a trust may help reduce estate tax implications. Putting art and collectibles into a trust may also help manage the complexities of transferring art among multiple beneficiaries or blended families by clearly identifying where a collection will go and when. Trusts and FLPs may be combined: rising generations often may own FLP interest through a trust for their benefit rather than directly.

### CRITICAL CONCEPT: COMMUNICATION

Families must consider both the financial and emotional value of passion assets; the emotional value may add complexity to the wealth transfer planning process. Clear and frequent communication often helps collectors mitigate future complexities and surprises.

- **RISING GENERATIONS:** Younger generations are often not interested in being custodians of a collection that they didn't help curate. Open communication about goals and wishes — often via a Letter of Intent that accompanies a collection and/or trust — can help collectors involve rising generations in the collection and assess their interest in future ownership.
- **TRUSTED ADVISORS:** Ownership of passion assets like art and collectibles often involves more emotion than other assets, so transparency around the collector's short- and long-term goals is critical.
- **POTENTIAL RECIPIENTS:** Trusts Institutions often have strict guidelines around art and collectibles that they can and cannot accept. Communication with their development and philanthropic teams is key to understanding their donation needs, process, and related tax implications.

**FEATURED PANELISTS**



**BARBARA HOEFT** TEP  
**WILLOW STREET**  
PRINCIPAL  
*barbara@willowstreetgroup.com*



**ANITA HERIOT**  
**THE FINE ART GROUP**  
PRESIDENT, AMERICAS  
*anitaheriot@fineartgroup.com*



**COLLEEN BOYLE**  
**THE FINE ART GROUP**  
SENIOR DIRECTOR, BUSINESS  
DEVELOPMENT, PHILANTHROPIC  
STRATEGY  
*colleenboyle@fineartgroup.com*



**SCOTT WEAVER** JD  
**WILLOW STREET**  
GENERAL COUNSEL &  
CHIEF FIDUCIARY OFFICER  
*scott@willowstreetgroup.com*



255 BUFFALO WAY · PO BOX 1905  
JACKSON, WY 83001

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PHONE 307-733-3327 · FAX 307-733-5037  
WILLOWSTREETGROUP.COM

## The Fine Art Group

7 Hill Street London W1J 5LJ  
+44 (0) 20 7478 2070  
mail@fineartgroup.com

**FINEARTGROUP.COM**

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