

## Art

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For more than two decades, clients have sought Irell & Manella LLP's deep expertise in the field of art and cultural property law. Our practice is both national and international and covers individual items and entire collections, from fine art to valuable memorabilia and collectables.

Our clients include some of the world's foremost private collectors, including many museum trustees, as well as private foundations, artists and museums. We are sought out by collectors and owners especially, including those with unique needs. While much of our work, including the largest single private art purchase transaction, remains confidential, public examples of our work include:

- Representing Maria Altmann and the Bloch-Bauer heirs with regard to the disposition of the five Gustav Klimt paintings restituted by Austria. On behalf of the Bloch-Bauer heirs, our attorneys negotiated the sale of the iconic "gold" portrait of *Adele Bloch-Bauer I*, reported in headlines internationally as the most expensive painting then ever sold, and negotiated the record setting auction consignment of the other four restituted Klimt paintings.
- Advising the Andy Warhol Foundation for the Visual Arts in negotiating a precedent-setting long-term consignment arrangement to sell artwork from the Foundation's collection through live auctions, online auctions and private sales – establishing a new frontier for artist foundations in the global market.
- Representing celebrated international automotive auction house, Gooding & Company, a market leader in fine collector cars, in negotiating the consignment agreement and advising on a world record-setting private sale, and record-setting single owner auction.

As described further within the links below, and on the biography page of Steven Thomas, the head of our Art Law practice, we have advised on several other world and national record setting transactions.

Our practice areas range from purchase and sale transactions both domestically and internationally, auction and dealer consignments and loans to domestic and foreign museums and galleries, to charitable giving of art, sales, use and personal property tax planning for purchases, sales and loans of art.

We also negotiate and draft art appraisal agreements, art review, advisory and consultant agreements, and irrevocable bid agreements, among many other art market agreements. Additionally, we advise on copyright, trademark and other intellectual property rights; foreign resale royalties; cultural heritage and patrimony concerns both domestically and internationally; art insurance review, including negotiation of policy terms and coverage; and private and public commission of art. Further, Irell advises clients on state laws, including the California Art Preservation Act and other state, federal (including the Visual Artist Rights Act) and foreign moral rights, artist consignment protections, and multiples laws. We also advise on import/export and tax related concerns, including on art loans and a collector's private movement of art such as between a collector's domestic and foreign residences.

Our art law practice is unique among other firms because we work within the context of a full service firm. This added advantage for our clients allows us to combine our art-specific experience with the expertise of our other practice disciplines, including tax, intellectual property, secured transactions, entertainment and litigation.

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The attorneys in our art group also have extensive practical knowledge and experience dealing with transactions and events within the unique environs of the art world. The head of our art group has taught a course in Art and Cultural Property Law for many years, starting in 2001, at UCLA School of Law. Our attorneys are frequently invited to author articles on art law concerns, and lecture and make presentations on art and cultural property law issues at a variety of venues. These include professional conferences (including ALI-ABA, ABA, USC Tax Institute, Heckerling Institute, USPTO Global Intellectual Property Academy, International Bar Association in London, Museum Trustee Association Director's Forum, National Business Institute and West LegalEdcenter and other associations), law and graduate schools (including Stanford Law School, USC Gould School of Law, Columbia Law School's EASLS Symposium, NYU's Art and Cultural Heritage Crime Symposium, and University of Florida Warrington College of Business Poe Center for Business Ethics), auction houses, museums, and art related gatherings (including IFAR, Los Angeles Art Fair, and ARCO). They are often quoted with regard to art related matters, and their transactions have been covered in various regional, national and international publications and periodicals.

The broad array of services and expertise provided by our attorneys is reflected in our work in the many aspects of art world transactions. Please click on the headings below for information about our specific areas of expertise.

### Purchase and Sale

Irell's art group has represented collectors across the full spectrum of art sales and purchases. These range from single works to entire collections – from antiquities to fine art to collectibles and memorabilia, between private parties (including individual collectors, dealers and museums), at auction, and private treaty sales, among others, ranging in value from thousands of dollars to single purchases in the tens of millions of dollars, and several exceeding \$100 million and even \$200 million.

Our attorneys have advised on the many aspects of such transactions, including planning, negotiation and due diligence relating to title, condition, value, authenticity and provenance; as well as sales and use tax planning; delivery and transport and storage of the art; confidentiality arrangements; resale royalties; import and export concerns and requirements; and transaction structure including use of agents for undisclosed parties. We have prepared and negotiated a variety of purchase agreements, escrow agreements, bills of sale, review on approval agreements, and consultant agreements including for scholars, conservators and others, as well as art advisory service agreements and appraisal agreements.

### Art Loans

From single works of art to entire collections, locally, nationally and internationally, our attorneys have advised private collectors on the many concerns and considerations relating to the loan of their art, cultural property, jewelry and collectibles. Our work includes drafting and negotiating loan agreements and advising on tax concerns, import and export issues, insurance (with particular focus on inconsistencies between the museum's policy terms and requirements and those of the collector's policy that may result in hidden gaps and vulnerabilities), government indemnities in lieu of and or in addition to insurance, anti-seizure protections, allocation of risk, and security and environmental requirements and transit-related considerations.

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In 2006, our attorneys negotiated the blockbuster exhibitions at the Los Angeles County Museum of Art and the Neue Galerie New York of the five Gustav Klimt paintings restituted to the Bloch-Bauer heirs from Austria. We have also advised on major art and cultural property loans to exhibitions at a variety of museums nationally and internationally, including the Metropolitan Museum of New York; Museum of Modern Art, New York; Los Angeles County Museum of Art; The Broad; Art Institute of Chicago; The National Gallery, London; Royal Academy of Arts, London; National Gallery of Art, Washington DC; The Tate and Tate Modern; Whitney Museum of American Art; Academie de France-Villa Medici, Rome; Galeries nationales du Grand Palais, Paris; Philadelphia Museum of Art; and Museum of Contemporary Art, Los Angeles; among many others.

### Auction and Dealer Consignments and Bid Agreements

Irell has advised on some of the largest single-owner consignments of art ever at auction, as well as secured some of the largest ever auction guarantees. We represent individual collectors in consignments of separate and multiple works of art during the auction seasons, advising on all aspects including guarantees, loans, and other terms of the auction consignment process. Such consignments have often resulted in national and world record-setting auction prices. As an example, we negotiated and drafted the historic consignment of the four restituted Bloch-Bauer Klimt paintings, which was one of history's most complex and valuable consignments and established several world records. We also advise bidders at auction on a range of issues and considerations including tax planning and bid strategy, and negotiate and advise on irrevocable bid and guarantor agreements between collectors and auction houses.

We also represent collectors on private treaty purchases and sales through auction houses, as well as on private individual consignments to galleries, art advisors, and dealers for private sale. Our art attorneys have extensive and unique experience in this area, and are sought out to lecture and write about auction consignment agreements. We authored an extended article on pitfalls and planning strategies in auction consignment agreements published in the April 2009 *Estate Planning Journal*, which remains relevant today as a key explanation of legal issues and other important considerations when consigning art for sale at auction.

### Art Insurance

Our art insurance group has deep experience assisting collectors in the review, placement and negotiation of art insurance, identifying vulnerabilities and gaps in coverage and pursuing claims. In advising clients, we have worked with major art world insurers (including domestic, foreign and international insurance markets) and crafted new cutting edge insurance products for fine art and collectables offering enhanced protection to our clients. We have assisted in obtaining improved policy terms and coverage for earthquake, partial loss valuation methods and recovery, dispute resolution, terrorism, international and domestic transit, museum exhibitions and sublimit and extended coverage for specific locations and worldwide, among other subjects.

We have also advised our clients on managing the risk of loaning their art for exhibition through the use of manuscripted endorsements to utilize the insurance belonging to others as the first line of defense against loss or damage. Further, we have assisted clients with particular insurance needs, including specialized exhibition and terrorism coverage, as well as addressing often perceived uninsurable risks.

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## Cultural Patrimony

Irell attorneys also represent collectors in transactions involving cultural patrimony. We have advised clients in navigating complex issues such as export and import licenses and permits and related concerns, customs requirements, foreign national umbrella and theft laws, domestic and international treaties, and bi-lateral agreements and conventions. We help clients confront these issues with regard to the purchase and sale or loan of cultural property, including Native American, ethnological tribal, oceanic, and similar art, antiquities, and archeological artifacts, as well as important fine art that may be deemed by a nation to be a national or historic treasure subject to cultural laws and restrictions.

## Museums

We have advised museums on copyright, trademark and other intellectual property matters related to art and collectibles, as well as on state, foreign and domestic moral rights, including the Visual Artist Rights Act and the California Art Preservation Act. We have also provided guidance on accession, deaccession, installation and deinstallation, acquisitions, governing bylaws and ethics codes, publications and merchandising, and abandoned art loans.

## Sales, Use, and Personal Property Tax

Irell advises on sales, use, and personal property tax planning for collectors with regard to small and large purchases and sales (private and auction), and loans of art, domestically and internationally. Our attorneys have assisted collectors with voluntary disclosure and payment programs with state tax authorities in a variety of states with regard to sales and use taxes relating to past purchases. Such advice and planning is also a consideration for an intended loan of art by a collector and any planned movement of art between different states.

## Public and Private Commissions of Art

Our attorneys have advised on and negotiated commissions of both private and public art projects, including a major state-of-the-art national football stadium and convention complex involving 12 separate public art commissions; a prime retail and residential project in the heart of Hollywood, CA; a major resort, casino and shopping complex in Nevada; and a major redevelopment real estate project involving several city blocks on the west coast with multiple buildings and public areas. We also have experience in handling the many aspects of private commissions directly between collectors and artists for both public and private display.

## Charitable Gifting of Art

Irell has advised individual collectors on charitable gifting of art, including creating deeds of gift for donations of art and collectibles, and monetary contributions to fund the purchase of art by museums and foundations, as well as the construction of wings, other additions and new facilities.