

## Buying Art - A Brief Guide

Advantages (✓) and potential problems (✗) with buying artworks from different sources.

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- Collector
- ✓ Negotiations and final terms are private. Good access to work.
  - ✓ Owner must reveal hidden defects known to owner.
  - ✓ Buyer can negotiate for specific warranties.
  - ✗ Owner usually only willing to give warranty of title.
  - ✗ Representations of a collector about condition or authenticity may be considered expressions of opinion which are not enforceable by a court.
- Artist
- ✓ Buyer can obtain more information concerning the work, might negotiate for different types of warranties (e.g., that work is unique, does not infringe copyrights of third parties, that artist will repair)
  - ✓ Can purchase the copyright from the artist. *NOTE: You do not buy the copyright when you buy the piece, unless you have a written agreement stating expressly that you bought the copyright (or a part of the copyright).*
  - ✗ Work may need to be conserved or prepared for installation or exhibition (e.g., artists typically are not good framers)
- Dealer
- ✓ Dealer sells from stock or on consignment from owner or artist. May be specialist in a type or style of art, or represent specific artists and be knowledgeable concerning that artist's work and market for that artist.
  - ✓ Buyer should expect more extensive warranties, in writing. Buyer has a right to rely on the expertise and representations of dealer, including statements concerning authenticity and condition.
  - ✓ Dealer may be more flexible than auction house in resolving disputes after a sale.
  - ✓ Dealer should have, or describe and produce, all items related to provenance.
  - ✓ Greater opportunity to inspect work, research artist and market for specific work, even view art in ultimate setting.
  - ✗ Representations or warranties of the work's value may be limited. While a guaranty that a dealer will buy back the piece is useful, a promise to accept art back in trade for another work is less useful.
  - ✗ If work is on consignment, dealer is not as likely as auction house to pass on costs of doing business to seller. Those costs are built into price.
  - ✗ Sales by dealers less regulated than sales by auction houses.
- Broker
- ✓ An individual not in the business of selling art, who assists in locating works of art or finding buyers. May have access to important collectors.
  - ✓ Broker may be expert and provide useful opinion on value of a piece.
  - ✗ Usually no written agreement, unclear who broker represents.
  - ✗ Owner may insist on remaining anonymous, causing problems if the buyer does not know he is dealing with a broker, the broker is not in direct contact with the owner, or the broker has no actual authority from owner.
  - ✗ Broker may make representations or promises beyond his authority.
  - ✗ There may be more than one broker involved, each increasing the purchase price.
- Warning Signs:** Broker takes a long time to respond to offers or requests for information. Broker cannot arrange a viewing. Terms fluctuate.



## Auction

- ✓ Major auction house has a wide range of “in-house” experts. They review pieces being offered, provide condition reports.
- ✓ Sales by auction houses subject to more regulation than dealers in certain states and cities such as New York and New York City.
- ✓ Auction catalogs contain substantial amount of information useful to buyers such as condition, the meaning of authorship terms, existence of a reserve price, when a consignor may bid, whether the auction house makes loans to owners or prospective buyers, and whether auctioneer intends to bid on owner’s behalf up to reserve price.
- ✓ Terms of authenticity guarantee are usually defined very clearly.
- ✓ Seller is paying many of the operating expenses of the auctioneer.
- ✓ Chance to get a bargain if no reserve or low reserve, or auction house offers “post-auction” sales where item did not meet reserve. [There is some incentive for consignor owners to agree to a reduced price in a post-auction sale, since they must pay auction expenses and pay to have the item shipped back to them.]
  
- ✗ Buyer pays a commission to the auction house on top of purchase price.
- ✗ Risk of overpaying if estimates are higher than market value (auctioneer pushed estimate to get piece into auction) or if auctioneer has an interest in sale beyond commission due to loans or guarantees to owner.
- ✗ Risk of overpaying due to “auction fever.”
- ✗ Buyer has less opportunity to inspect piece before buying
- ✗ Representations of condition and sometimes authenticity may be voided by notice that piece is sold “as is” or by express disclaimers of warranties.
- ✗ Almost no opportunity to return a piece unless a warranty is breached.

## Decedent’s Estate

- ✓ Title is absolutely good where sale is court approved.
- ✓ Chance to get a bargain.
- ✗ Almost never more than a warranty of title.
- ✗ Executors and heirs usually not knowledgeable. Later claims against estate or executor or estate agents difficult or impossible.

## Bankruptcy Estate

- ✓ Chance to get a bargain
- ✓ No sales tax or use tax.
- ✗ Highly unlikely there will be more than a warranty of title.
- ✗ Difficult to identify works that are available.