

Buying Art - A Brief Guide

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

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BUYING FROM A 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 usually considered expressions of opinion which are not enforceable by a court.

DIRECT PURCHASE FROM AN 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)

PURCHASE FROM A GALLERY OR DEALER

- ✓ Gallery 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 the 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.
 - ✓ Gallery may be more flexible than auction house in resolving disputes after a sale.
 - ✓ Gallery 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 the buyer's home or office on a trial basis.
 - ✗ "Certificates" of "authenticity" and warranties of the work's value may be given as a marketing tool, but have limited value. 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 galleries or other dealers less regulated than sales by auction houses, particularly auction houses in art centers such as New York.
- Warning Signs:** Gallery deals only in prints with large edition sizes. "Certificate of Authenticity" is larger than the art work. Gallery is on a cruise ship. Gallery offers only one or two new or unknown artists over an extended period of time. Gallery has to check with the artist before finalizing a sale. Gallery cannot offer advice on display, care and maintenance of piece, a particular problem if the piece is made from non-traditional materials.

BUYING THROUGH A BROKER

- ✓ A broker is an individual not in the public business of selling art, who assists in locating art or finding buyers. May have access to important collectors and collections.
 - ✓ Broker may be expert and provide useful independent opinion on value of a piece. This is not the same as an independent appraisal. A professional appraiser should not offer to assist with the sale or purchase of a piece, nor offer to buy a work of art.
 - ✓ Broker is not likely to have a relationship with a specific artist and can provide independent assessment of the market for a piece or an artist's work in general.
 - ✗ Usually no written agreement, may be 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. Seller is anonymous. Terms fluctuate.

BUYING AT AUCTION

- ✓ Major auction house has a wide range of "in-house" experts. They review pieces being offered, set auction estimates, may provide condition reports. Some of this information is contained in the auction catalog.
- ✓ Sales by auction houses subject to more regulation than dealers in certain states and cities such as New York and New York City. E.G. catalogues must identify the meaning and function of any estimate or estimated value. NYC Rules Title 6, §2-122(j)
- ✓ 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 but in technical terms that may not be well defined.
- ✓ Should have, describe, and produce all items related to provenance.
- ✓ 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: (a) estimates are higher than market value because auctioneer pushed estimate to get piece into auction; (b) auctioneer has an interest in sale beyond commission due to loans or guarantees to owner; (c) "chandelier bidding" occurs, where auctioneers begin a sale by pretending to spot bids in the room, but point to nothing more than light fixtures (legal even in NYC); (d) "auction fever" sets in.
- ✗ Buyer may have less opportunity to inspect a piece before buying.
- ✗ Representations of condition and sometimes authenticity are 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.

BUYING FROM A 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 are difficult or impossible.

BUYING FROM A BANKRUPTCY ESTATE

- ✓ Chance to get a bargain
- ✓ No sales tax or use tax.
- ✗ Process is complicated. Offer to buy must be approved by Trustee. Creditors must have a chance to object to the price, and can "bid" the debt owed to them if they believe they can get a better price, although this is not common.
- ✗ Highly unlikely there will be more than a warranty of title.
- ✗ Difficult to identify works that are available.

