

The latest work of insurance

As art ownership disputes increase, insurers can help protect a collector's title, writes Alison Gregor

As you prepare to showcase your million-dollar painting in your multi-million-dollar home, you might consider taking advantage of a tool the art world has recently borrowed from the real estate industry: title insurance.

The number of ownership disputes over fine art has risen during the past two decades, mainly as a result of the hunt for art looted by Nazis from Jewish families during the Holocaust. Disagreements over ownership also result from contemporary theft, along with more run-of-the-mill cases of liens, bankruptcies and estate issues.

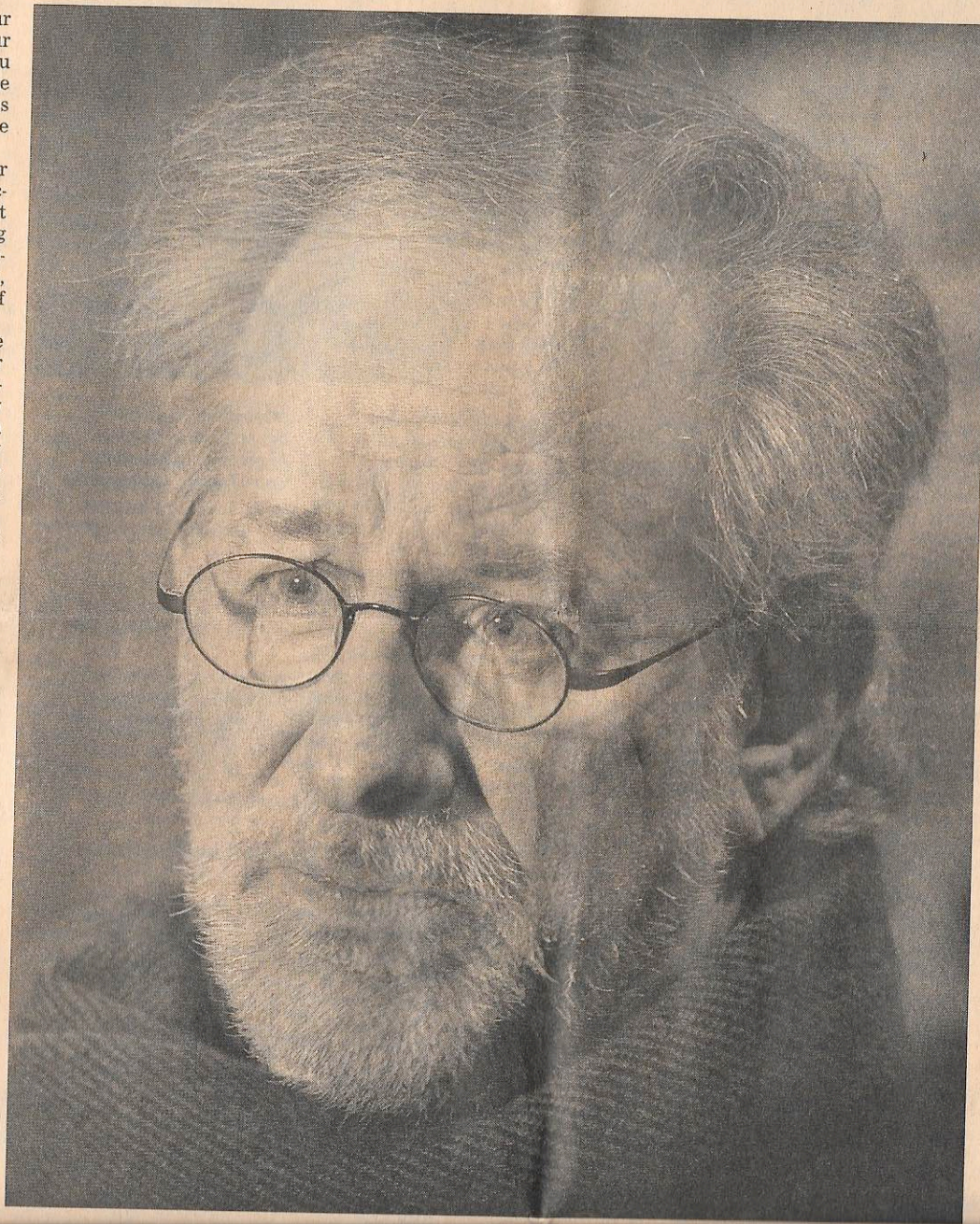
To accommodate art lovers who want the same level of protection for art as for other expensive assets, such as real estate, a company called ARIS Corporation, based in New York, offers an art title insurance policy. If a client's title is disputed, ARIS will pay any bills incurred in a legal defence and, in the event of a loss, will refund what was spent on the piece.

"It's amazing how many people have title stories about art," says Gifford Miller, chairman of Liberty Art Title Agency, which sells ARIS policies in New York. "Art is an extraordinarily valuable commodity, which is portable, and there's no record-keeping on it."

Competing ownership claims to art first came to public prominence when the Seattle Art Museum, which included Henri Matisse's "Odalisque" in its collection, was challenged in 1997 by the heirs of Paul Rosenberg, a notable Jewish art dealer in Paris during the second world war era. After a lengthy investigation of the painting's provenance, the museum turned it over to the Rosenberg heirs.

As bounty hunters began scouring the art market for other examples of art stolen by the Nazis, contemporary theft title cases also began grabbing headlines. The FBI estimates that as much as \$6bn worth of art is stolen each year, much of which is put back into the stream of commerce. Steven Spielberg, the US film director, relinquished the painting "Russian Schoolroom" by Norman Rockwell after it was determined to have been stolen from a gallery more than three decades ago.

The art dealer who sold Spielberg the painting in 1989 did due diligence prior to the sale, but failed to uncover an FBI crime report. The painting is now entangled in a legal battle between art and movie industry



Philanthropy

Perils of public employees

"Default" – (v.) a failure to act; inaction or neglect.

On the face of it, the term "default giving" seems an oxymoron. After all, who is more action-oriented than those giving generously to improve society? Yet "default gift" is becoming an increasingly accepted phrase in the philanthropy lexicon.

To clarify, a default gift is where a grant must be made (usually at the end of the year to meet a foundation's minimum distribution requirement) even though a recipient has not been identified. In this case, some foundations turn to "easy targets", such as museums or universities, which do not require the kind of complex research, decision making and evaluation that often accompany commitments to affect real social change.

While it's certainly not wrong to give to institutions such as museums, it is, in a sense, a failure to do so when it is the result of a lack of enthusiasm, time or staff to pursue an alternative. This increasing readiness to give by default is troubling, and may be a result of the lack of education and support available to foundation leadership and personnel.

According to Foundation Center, a research and educational group, about 83 per cent of US-based foundations reporting in 2006 had no staff. For those that did, the number ranged from a median of two (for smaller ones) to seven for those with assets of \$100m or more. These ratios are inadequate and the result of factors that include the pressure to

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"Had Spielberg had our insurance, we may have looked at all the information and said, 'Maybe we should file a quiet title suit on behalf of Spielberg', so there's a chance that he might have been able to keep his beloved work of art," says Judith Pearson, president of ARIS.

The title insurance offered by ARIS also covers situations where the authority to sell is unclear and liens have been filed.

"Only 25 per cent of the ownership claims in the art world are historical or contemporary theft," Pearson says. "Most of the claims - 75 per cent of them - are more traditional liens and encumbrances."

For example, the Berry-Hill Galleries, a New York-based dealer known worldwide, went through a bankruptcy in 2005 that created encumbrances on numerous artworks in its inventory. More recently, the highly reputable Salander-O'Reilly Galleries, also in New York, were sued by several clients over consignment sales that were allegedly unpaid.

"In the first two weeks after Salander-O'Reilly's insolvency went public, there were over 40 lawsuits involving \$80m in debt both in the United States and Europe, touching everyone from sports celebrities to Hollywood celebrities to financial-world notables," says Lawrence Shindell, chairman and chief executive of ARIS. "As that inventory continues to move in the market, buyers come to us, saying, 'How do I know this work is not caught up in the challenging of assets at Salander-O'Reilly?'"

ARIS executives assert that as more money is invested in art - fine art sales surpassed \$40bn in 2007 - there is a need for a third party that can remove, reduce or accept the risks associated with title. ARIS has a complex database for its provenance research and risk analysis.

"In title insurance, where we now become a neutral party to examine ownership, just as is done in real estate, we can either eliminate risks or reduce them, and then insure over what can't be reduced," says Shindell.

Pearson says art title insurance enables art investors, whether they be collectors or museums or auction houses, to achieve the finality of a transaction. "Without clear ownership of the artwork, you can't sell it, gift it



or donate it with any confidence," she says.

Robert Koo, a New York-based art succession and philanthropy consultant for Bonhams New York, a branch of the auctioneer and appraiser of fine art and antiques based in London, says he encourages his clients to purchase title insurance, especially those attempting to use their art as a vehicle to create philanthropic capital.

"The last thing you want to see is the art deal providing the capital to a charity unwinding down the road over a title issue," he says.

However, as yet, none of Koo's clients have heeded his recommendation.

"I think art title insurance is going to be the standard in the future, but it's going to take a while to catch on," he says.

Pearson says ARIS has written more than 300 title insurance policies on artworks with values ranging from \$20,000 into the multimillions. Like title insurance for real estate, the policy, which is not tax deductible, can be purchased for a one-off premium that

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generally is about 2 to 3 per cent of the piece's negotiated value. However, depending on the artwork, ARIS has written policies for as little as 1.75 per cent and as high as 6.75 per cent of the value.

The company, which has been writing policies since 2004, has yet to have a claim.

"It's the nature of the beast that there will be claims," says Shindell. "This is not something you can write to zero risk."

For more than two decades, Hiscox, a syndicate of Lloyd's of London, has been offering its own form of insurance, which technically falls under "property and casualty", for artworks that may have a defective title. That insurance, which is renewable annually, covers legal defence costs together with the value of the item if it is lost.

Hiscox has had claims, though they have "tended to be on the smaller side", says

Unscreened
Film director Steven Spielberg purchased a Norman Rockwell painting, not knowing that it had been stolen Getty

Robert Read, group fine art underwriter for the syndicate.

Premiums are typically 1 to 4 per cent of the value of the artwork. Hiscox also serves as the reinsurer for ARIS.

"We chose to back them because I liked their policy," says Read. "They're able to offer it on a basis that we wouldn't be able to. And offering a one-shot policy should be much more attractive in the market."

Despite that anticipated broader appeal, the title insurance offered by ARIS has hardly taken the art market by storm. Richard Gray, partner in Richard Gray Gallery in Chicago and New York and a former president of the Art Dealers Association of America, says that in theory, art title insurance should be a useful tool in a market that lacks transparency. In practice, however, dealers are not purchasing it, most likely because of its high cost.

"I don't have it, and I don't know of anybody who does," Gray says. "I still think it's conceptually a great idea."

The Seattle Art Museum, which lost "Odalisque" to an ownership dispute, has no title insurance, nor does it have plans to purchase any, says Cara Egan, a spokeswoman.

Several art appraisers said such insurance would not increase the value of a piece of fine art, and several lenders said they would not take title insurance into consideration when lending on artwork used as collateral.

"The transactions are based on assuming good title, so insurance wouldn't affect it," says Elizabeth Feely, a New York-based art consultant with extensive experience on the lending and insurance sides. "Still, title insurance is protective. It's just not for everybody."

For those art lovers for whom cost is a big factor, the New Jersey-based Chubb Group of Insurance Companies recently added defective title defence coverage to its homeowners and valuable articles insurance policies for no additional cost. Chubb will reimburse clients for legal fees in a title dispute up to \$100,000.

But if the client loses the court case and thus the artwork, they get no compensation.

"We're offering something that we think is a different, but more universally applied solution to title disputes," says Dorit Straus, worldwide fine art manager for Chubb.

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