

Policy Education

IN A MARKET STEEPED IN DOUBTS ABOUT PROVENANCE, IS ART TITLE INSURANCE GAINING ACCEPTANCE AMONG COLLECTORS? BY LESLIE WERSTEIN HANN



WHEN PIONEERING AIDS RESEARCHER-turned-gallery owner Anthony J. Japour recommended that one of the art funds he manages buy Ciu Xiuwen's "Three Realms (Sanjie)" (2004), he took the unusual step of suggesting the fund also purchase title insurance for the piece.

"As an investment manager to contemporary art funds, I remind the principals of the funds I work with of their fiduciary responsibilities," explains Japour, director and chief curator of the Internet-based AJ Japour Gallery. "I advise them to make sure the pieces I recommend to be brought into the fund have clear title so there's no issue when I'm asked to sell them in the future."

With so many artworks making headlines more often for ownership disputes than for their significance to the art world, it's no wonder Japour decided to protect his newly acquired asset by obtaining title insurance. Unlike insurance that protects against theft or damage, title insurance protects the policyholder against the risk that someone else is the rightful owner or has an ownership interest in an artwork. After all,

everything from historical looting to forced sales, illegal importing or exporting and liens can stand between the current owner and claimants these days.

One high-profile case involves Norman Rockwell's "Russian Schoolroom" (1967), which was stolen in 1973. The theft was reported to Clayton, Mo., police at the time, but the painting wasn't on any stolen-art lists when New York-based dealer Judy Goffman Cutler bought it at the now-defunct Morton M. Goldberg Auction Galleries in New Orleans in 1988 and sold it to director Steven Spielberg the following year. When Spielberg's staff spotted the painting on an FBI website listing stolen works in 2006, they used art-market channels to contact the bureau, which had been following a tip about the theft since 2004.

"It wasn't until 35 years later, when prices of Rockwell increased exponentially, that a theft from 1973 became of interest," laments Cutler, who is fighting to retain ownership of the painting, which she took back from Spielberg in exchange for another of similar value. (The oil-on-canvas

Rockwell is currently valued at \$700,000.)

The "Russian Schoolroom" situation is just one example of how volatile the area of title can be. Because there's no statute of limitations on title claims, "there is no such thing as finality in the art transaction," says Judith L. Pearson, a former insurance executive who founded ARIS Title Insurance Corp., based in Denver, in 2004 with her brother, art consultant and lawyer Lawrence M. Shindell.

PROTECT AND SERVE

While insurers such as Lloyd's of London have offered occasional title coverage, ARIS is the first and only company to market policies to collectors, galleries, dealers and museums that last for the entire ownership period. Prior to ARIS's entry into the field, title insurance required yearly renewal, and policies did not cover an owner if title questions arose after the sale of an artwork. The company is the first licensed art title insurer and is state-regulated in the same way as land title insurers.

"The first year we were out there, we

Gallery owner Anthony Japour advised the art fund he manages to purchase title insurance for Ciu Xiuwen's "The Three Realms (Sanjie)," 2004.



Franz Dieckow's "Offiziers-Typen (Officer Types)," 1916, is part of the Ernst Collection, which ARIS covers with title insurance.

were fundamentally changing the way the art world transacts business, and it's required a huge education," Pearson says.

While the credit crunch has left investors a little wary, the Salander-O'Reilly scandal, in which New York gallerist Larry Salander is accused of selling artworks on behalf of owners and investors who were never paid, was a wake-up call.

"Salander-O'Reilly confirms to the world that just because you buy from a well-respected gallery does not mean you have clear title," Pearson says. "The sellers, galleries and dealers are recognizing that they have to be more transparent."

In the past, sellers have been hesitant to provide too much information about the works they represented, but the current climate makes transparency all the more important. "We put up a Chinese wall so they can disclose to us with confidence, knowing that we won't disclose to the buyer," she says.

ARIS's policies guarantee not only legal title and provenance, they cover an artwork until the owner or the owner's heirs sell or give the work away. In addition, the company will defend a client against a title

claim by paying the policyholder if the artwork has to be returned or settling with whoever the courts decide is the rightful owner so ARIS's policyholder can keep the work. The maximum amount the policy will pay—over and above defense costs—is equal to artwork's value established at the policy's inception, but clients can buy more coverage if the appraised value increases.

London-based Hiscox backs ARIS policies—which can be offered only in the United States—with reinsurance, and it has been selling its own defective title coverage globally since 1998. However, the Hiscox policy must be renewed every year and has exclusions for title defects the policyholder should have been aware of.

"When you have to renew a policy annually, there is no certainty that it's going to be renewed," says Robert Read, the Hiscox fine arts underwriter. "The ARIS policy takes out that uncertainty."

So what does all this protection cost? It depends on the risk. For the majority of policies ARIS has written, the one-time premium has ranged from 2% to 4% of the artwork's value, but insuring riskier pieces can run as high as 10%.

WRITING THE RANGE

Only a licensed title insurer like ARIS can sell a true title policy, but other art insurers are helping clients deal with the risk in different ways.

Because U.S. courts sometimes favor the ownership rights of the buyer if the theft victim didn't take action to recover the stolen art and if the buyer took reasonable steps to verify the title was clear, Chubb introduced a new due-diligence service in February and added \$100,000 in defense costs for title disputes. Chubb clients, for a fee, can get an "ownership rights protection report." Art Title Advisors LLC checks law enforcement and art authorities to ascertain that the work of art has not been reported stolen or sold under duress.

Fireman's Fund is also adding \$100,000 in defense costs to its policies and will pay \$10,000 in provenance research after a title claim is filed. "One of the things required for this coverage is that the insured has taken reasonable steps to check provenance," says Theresa Lawless, director of fine arts and collectibles.

AIG Private Client Group will advise clients on key steps for good due diligence:



use a good dealer, ask for the provenance, check all stolen art registries and have a lawyer review contracts and consignment agreements, according to Katja Zigerlig, AIG’s director of fine art and jewelry business development.

WHY BOTHER?

While a year-to-year policy on a collection worth tens of millions of dollars might cost an owner around \$2,500 a year in premiums, title insurance on a single painting valued at \$1 million could require a one-time premium of up to \$40,000. Considering the substantial premium, collectors are thinking twice about purchasing the coverage, even though some wealth and art advisors are starting to recommend it.

“I tell clients who are thinking strategically about selling or gifting that they really need to think about title insurance,” says Robert Koo of Koo Consulting in West Palm Beach, Fla., who specializes in collection management, succession and philanthropy.

“A lot of people are still sitting on the sidelines and are not willing to pull the trigger,” Koo adds. “But it’s all about mitigating risk, and I believe that one day title insurance is going to become standard.”

Still, plenty of influential advisors say that it might be better to invest in expert due diligence instead of paying an extra \$40,000 or so to insure the title of a \$1 million painting.

“I don’t see a real need for a high-priced product when you can do your homework in other ways,” says Karl Schweizer, head of Art Banking at UBS, which provides a due-diligence service.

While the Art Loss Register, the FBI and various Holocaust art registries list stolen artworks, common art research methods are unlikely to uncover any other title defects. “A lot of people talk about defective title in terms of Nazi looting or theft,” Pearson says, “but the reality is that 75% of claims are more traditional liens as opposed to gaps in provenance and theft.”

Franz Lerch’s “Fogoly Forok Fistek Sziberianban,” 1916, is part of the 300-piece Ernst collection.

PEACE OF MIND

Even when the provenance of a collection or work of art seems clear, title insurance can ease everyone’s minds, as in the case of St. Louis artist Marian Steen and her husband, Richard Knox. Steen inherited a group of nearly 300 drawings and paintings that Austro-Hungarian and German POWs created at a Siberian internment camp during World War I. Rudolph Ernst, an Austrian officer who was also detained at the camp, collected the works, many of which were done on scrap writing paper or postcard stock and inscribed to him. Each piece bears a Russian stamp and signature granting Ernst permission to take it from the country, as well.

But when Steen decided to put “The Rudolph Ernst Collection” up for sale, she chose to purchase ARIS title insurance. “As in any historical art collection, there is always a concern that a claim may arise,” says Jane C.H. Jacob of Jacob Fine Art in Chicago, which is representing it for sale, ideally to a museum. “Having title insurance on the collection puts everyone involved at ease.”

ARIS Title Insurance

303.468.6200 aris-corporation.com

AIG Private Client Group

877.333.9847 aigpcg.com

AXA Art Insurance

212.415.8400 axa-art.com

Chubb Group of Insurance Companies

908.903.2000 chubb.com/personal

Fireman’s Fund Insurance Co.

800.227.1700 firemansfund.com/art

Hiscox, London

44.870.084.3777 hiscox.com

Hub International Fine Arts

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