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From Collection to Collateral: What Families Should Know About Art Financing

Fine art can represent the culmination of a lifetime of collecting and evidence of its owner's keen eye for beauty. Just as easily it can be an unwanted hand-me-down, a token of a beloved relative with eccentric taste.

In either case, the owner of the fine art might want to extract liquidity from their art by borrowing against it. The proceeds of the borrowing could be used to expand the collection, to purchase vacation homes, or for other purposes allowed by the lender.

Fine art is a concentrated store of value that is fragile and portable as well as subject to title claims and questions of authenticity. Each of those attributes plays a part in the process and documentation of an art loan facility.

Who lends against fine art?

Two main sources of fine art lending are private banks and finance companies. Private banks are willing to provide financing against fine art on favorable terms, but this lending is typically part of a broader relationship with a customer. These banks prefer to provide lending facilities to borrowers to whom they also provide investment management, mortgage lending, and general banking services. While the work of art itself as collateral needs to be of sufficient value to support the loan, these institutions are looking not just to the collateral to secure repayment but also to the overall creditworthiness of the borrower, with the expectation that if things go sour, the borrower has the resources to pay off the loan amicably.

Finance companies, on the other hand, act more like asset-backed lenders. Their pricing is more expensive, and they may be quicker to resort to the collateral should the borrower default on the loan.

What are some concerns for lenders?

In addition to the typical protections required by lenders in any financing arrangement, fine art presents various facts that need to be established and challenges that need to be surmounted.

The borrower actually owns the art.
The lender will want to see bills of sale to establish proper chain of ownership and may require an affidavit of ownership from the borrower.

There are no other claims against the art.
The lender will run lien searches against the borrower to make sure the art has not been pledged to someone else or otherwise subject to the claims of a judgment creditor or tax authorities. Lenders will also want to understand the provenance and overall chain of title, especially as it relates to potential wartime claims of theft such as those that have arisen with artists such as Gustav Klimt, Egon Schiele, and Henri Matisse.

The art is authentic.
Depending on the age of the art, the borrower may be required to retain experts to perform authentication and scientific testing. A clear chain of title tracing all the way to the artist, with reputable dealers at each step along the way, can minimize the risk of forgery.

The value of the art has been established.
The lender will require the borrower to obtain an appraisal establishing the fair market value of the fine art for loan collateral

purposes. The lender may reserve the right to require annual reappraisals, as well as more frequent reappraisals should a default or other circumstances arise.

The art is insured.
The lender will require the borrower to have all-risk property damage insurance policies covering the art for at least the full appraised value. The borrower will need to work with its insurance broker to deliver to the lender insurance certificates that document the coverage limits and make clear that the proceeds of any insurance would be paid directly to the lender.

The art is held in an acceptable location.
Lenders are often willing to let borrowers store fine art in their homes, assuming the lender is comfortable with the security systems in place and that the art would be protected from the elements. Otherwise, the art would need to be stored, at the borrower's expense, in a climate-controlled warehouse that is appropriate for fine art storage.

The lender can access the art.
If the fine art is held in a warehouse, the lender will require an agreement with the warehouse operator making clear that the operator will not transfer the art out of its warehouse without the lender's consent and that it will turn the art over to the lender in the event of a foreclosure. If the fine art is held in the borrower's home, the lender will need an agreement from the borrower (and, if applicable, the landlord) that it will allow the lender to enter its property to retrieve or inspect the fine art.

What are some concerns for borrowers?

While borrowing against fine art can be an excellent source of liquidity for the right collector, borrowers should be aware of the risks inherent in an art loan.

Privacy.
An art loan is a secured transaction, which means that a lender will need to "perfect" its lien on the collateral by filing a UCC-1 financing statement with the appropriate governmental authority. This financing statement is a public record that lists the name of the debtor and may list the specific art that is subject to the lender's lien. This record is obtainable by anyone—in fact, in some states it can be obtained online at the secretary of state's office for free. If a borrower is concerned about privacy, then before embarking on a financing, the borrower should transfer title to the art from their individual name to a generically named limited liability company. If a borrower waits until the documentation phase of the financing to transfer the art to an investment vehicle, that reorganization could delay closing while the loan officer seeks approval from their credit committee. For families concerned about confidentiality, this issue frequently arises in the context of broader estate and asset-holding structures, making coordination with legal and tax advisors particularly important.

It is important to note that transferring title to a limited liability company will not relieve a collector of individual liability, because the lender will require the collector to personally guarantee the loan. However, an unsecured guarantee would not be disclosed on a public financing statement.

Ongoing payment obligations.
Borrowers should be confident that they have the cash flow to satisfy ongoing interest and principal payment obligations. The lack of liquidity that gave rise to the need for a loan could cause a problem when it comes time to make payments in service of the loan. In particular, if the lendable value of the art declines—which could occur as a result of deterioration of the art or an annual reappraisal required by the lender—the borrower could be required to prepay all or a portion of the loan before its stated maturity.

Use of proceeds.
Borrowers need to understand the permitted uses of proceeds. Some art loans restrict the loan proceeds from being used to purchase publicly traded securities or to pay personal or household expenses. The borrower and their lender should have a full discussion of the anticipated use of proceeds at the outset of a transaction to avoid technical defaults.

Lender involvement with the art.
The lender takes on significant risk with fine art, and they are going to be involved in the management of their collateral. If the borrower wants to relocate the art, lend it to a museum for exhibition, repair the art, or sell the art, the lender is going to be involved in the process. Borrowers need to involve their lenders early in the process if they want to relocate art for a public

exhibition. Additionally, lenders may not be willing to let the art leave the United States for an auction abroad, even if that foreign auction could generate the highest return on investment.

Death.
In the event of the death of the borrower, the lender may have the right to call the loan. This art could be a treasured heirloom, intended to be passed on to the next generation; however, unless the loan can be satisfied with cash or other assets, the art may instead be applied to repay the lender. Careful planning for such contingencies with sophisticated legal and financial advisors is warranted to mitigate these risks.

Conclusion
Art lending allows a collector to access liquidity while still enjoying the benefit of their collection. Borrowers need to understand the risks inherent in borrowing as well as the due diligence gauntlet that lenders will run them through. Finally, as with many financing tools, art lending works best when integrated into a broader wealth, estate, and succession plan.

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