

APPROACHES TO DEALING WITH ARTISTS' ESTATES

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“Death can really make you look like a star” [Warhol]

According to the German social research institute Emnid 30 percent of Germans leave a will. Of these 53 percent are either null and void or open to dispute. Given that most artists are inherently opposed to legal formalities, the percentage leaving a will in this group will be significantly lower. As Jean Tinguely put it, the majority of artists involve themselves exclusively with death as a means of striving against it. Any planning for this development, that is a will, does not exist in most cases. The intestacy rules that then apply merely postpone the question of how to deal with the artistic estate. This does not solely concern the material distribution of assets, but moreover the preserving and securing of a life's work that is of cultural value.

Occasionally artists have, during their lifetimes, had very specific ideas about what should happen to their artistic estate. Erich Heckel donated the majority of his work to public collections, Franz West established a private foundation just six days before his death that favored his family but prevented any access to his work. In the Seventies, emerging New York artist Jerry Wenstrom, answered the question, “How will my work survive me?” rather dramatically: not at all! He destroyed all his work, a fate Kafka had also once desired for his unpublished manuscripts.

In the overriding majority of cases however nothing occurs during the lifetime of the artist. They die, but their work remains. It is left to their heirs to find a solution. Depending on the importance the artist has achieved before their death, and the amount of interest on the part of their heirs and the art world, the work may remain where it is in dusty attics, in private or public archives, be shared among family members, or even remain untouched for years due to disputes. The shocking case of Oskar Schlemmer has been one example of this for the last 70 years.

How Can My Work Survive Me?

On average an artist's estate comprises 3000 items. At the time of death of most artists, this does not involve a large monetary value, and in the vast majority of cases this will not change. The probability of the work of an artist becoming relevant only posthumously and consequently gaining in value à la van Gogh, is extremely small. Neither will its value necessarily increase if the estate is left to a museum. On the contrary, although estates are still a cheap means for museums to increase their holdings, today's increasingly full repositories have also become much more selective. It used to normally be enough that an artist was of national importance, for them to be accepted into a museum's holdings. But such a step – whether initiated by the artist or their heirs – by no means provides a guarantee that an artistic estate will appreciate in value. Additionally, only a fraction of the work, if any at all, will appear in exhibitions and publications.

The elevation of any artistic legacy has always required, and still does today, the efforts of others: the artist's family, their gallery, a foundation or a similar private administrator of the estate. How, and in what specific form, such an undertaking may be attempted, will depend, of course, on the significance the artist has achieved during their own lifetime and on the financial resources that are available. The model that has been most frequently used in Europe over the past decades, is an institution dedicated to the artist, in the form of an association or foundation, or the administration of the estate by the gallery that represented the artist during their lifetime.

Exploitation or Appreciation

Regardless of the administrative and legal models that have been selected in individual cases, there are always two positions that have to be reconciled. The focus should be

on the preservation of the artistic legacy for posterity, the maintenance of perceptions of the œuvre's significance, or even its entry into public discourse for the first time, and ideally the long-term increase in the importance of the work in art historical contexts. In addition to this, and not necessarily in conflict with it, are the financial interests of the artist's heirs and the artist's interest in their financial security.

In order to achieve the best possible combination in pursuit of these two objectives, a number of fundamental questions must first be addressed: should the decision of how to proceed with the estate be established during the artist's lifetime, or only posthumously? Should management of the estate continue indefinitely or have a time limit? Is it sensible to separate management of the estate from other forms of representation? As is frequently the case, here too, there is no perfect solution. The requirements for a suitable and efficient administration of an estate can be as diverse and different as the work of any artist. Nonetheless, the past has revealed certain circumstances that should definitely be avoided, as well as which strategies can successfully be employed today, when working with and for the work of a deceased artist.

Ideally the artist will already have relieved his heirs of decisions of how to proceed with the estate. In doing so however, the artist may risk the danger of causing greater or lesser disagreements amongst his descendants, just as any haphazard planning of the distribution of assets may also do, but nevertheless may have prevented, from the outset, erroneous decisions being made, due to a lack of knowledge or by the descendants simply being overwhelmed. The foundation model Franz West chose shortly before his death, as mentioned above, immediately led to his family initiating legal proceedings due to doubts concerning his business acumen during the time he was establishing the foundation. Such decisions are, in the literal sense of "last will," inevitably problematic and cannot be reviewed by external parties. West's idea of appointing his long-standing office manager and closest employee as chair of the trustees, whether legally agreed when he was in full possession of his mental faculties or not, is still plausible; probably no one knew his work better. At the same time, it has to be asked whether this specialist knowledge could have been employed in a different way, and a more neutral board of trustees appointed; like for example, the case of the US American artist Mike Kelley, who selected

a former museum director and an art historian for the foundation he established.

Administration Versus Management

It is important to examine the set of skills required when working with an estate.

It is frequently forgotten that an artist's estate is an economic entity that should also be financially viable, and one which also requires suitably professional leadership. Those entrusted with such responsibilities should be able to combine a number of very differing abilities: on the one hand there is curatorial knowledge (knowledge of the work, the upkeep and archiving of the collection and museum contacts) and on the other, organizational and managerial skills, such as how to lead an organization, the development of strategic and financial models, their implementation and monitoring, negotiation skills, and a grasp of legal and tax issues, particularly if the estate is being managed in the form of a foundation. Reliable contacts in the art market are essential, as the majority of artists' foundations are financed by sales, and an increase in the value of holdings is the most important component in the medium and long-term financing of an estate. Finally, knowledge is required of program development, should the estate be conducted in the form of a charitable foundation (that is, an effective and sensible allocation of resources, in the form of stipends, gifts and the support of other charitable objectives).

In examining this range of skills it rapidly becomes clear that the conventional artist's foundation, as it existed in the 20th century, has become obsolete. Even if the concept itself is merely an empty vessel that may be filled as required, it still brings to mind dusty concepts of administration rather than active management. Over the last twenty years, the cultural sector and the art market have changed as rapidly as the rest of the world, and with it the challenges facing the custodians of estates. The professionalism necessary, in dealing with such responsibilities, requires people whose qualifications extend beyond being merely a member of the artist's family. Whilst the US American art historian Lloyd Goodrich's reputed quip, "Never believe the widow and don't listen to the children," is certainly an exaggeration, family members still need to be provided with commercial, legal and specialist information. There are however, examples of thorough-

ly satisfactory cases, ones where the widow, children, or grandchildren possess a comprehensive expertise encompassing all the above skills. I am thinking for example, of Sandy Rower, one of Alexander Calder's grandchildren, who manages the Calder Foundation in New York with great professionalism. The Judd Foundation has taken a very successful middle route; Donald Judd's two children, Rainer and Flavin Judd, head its board but are nonetheless supported by four professional and independent advisers who are also members of the board. Such structures not only assemble the necessary specialist knowledge but also neutralize, what is frequently, the widow(er) and children's very emotional relationship to the deceased artist and their work, and which not infrequently hinders the objective and unemotional approach that is required to the artist's work and the subsequent responsibilities.

But often in past decades, in addition to family members and acquaintances that were familiar with the field of art, those entrusted as custodians also had suitably training, for example as lawyers or accountants. From today's perspective, neither the former nor the latter always acted completely in the interests of the estate. For example, in 1965 David Smith made his friend, the renowned art critic Clement Greenberg, the administrator of his estate and into an adversary of his descendants. Openly, but without either the explicit right to do so or not, Greenberg removed white paint from six large-scale sculptures, in order to increase not only their artistic, but presumably their market value too, using the justification that this was only an undercoat, and Smith had never wanted to leave them in this state anyway. Having won the power struggle, Smith's daughters then took over Greenberg's responsibilities. And the estates of Andy Warhol, Francis Bacon and Robert Rauschenberg – all managed by friends and expert acquaintances – have been, and still are, at the center of legal disputes relating to money and fees. This may probably also be a consequence of the three being great favorites of the art market, awakening greediness everywhere, but at the same time arousing the state and general public's attention and their ambitions to control the estates. This has led, as so often is the case, to judges being given the responsibility of deciding what would be in the interests of the artist, and how the will and the articles of a foundation should be interpreted.

The Rauschenberg Foundation and three former trustees are currently playing all this out, before the art world public, in their own dispute over appropriate com-

ensation for their "extraordinary services" in courts in Florida, and at the same time are opening a new chapter in the history of the art market. They are claiming fees of around 50 million US dollars, with regard to an increase in the value of the estate, namely by a purported 1.6 billion US dollars, since Rauschenberg's death in 2008. In mid-August of this year the district court in Florida awarded them no less than 24.6 million dollars. The foundation has appealed against the decision.

Whatever decision the appointed courts may ultimately arrive at, an increase in the work's significance and therefore its monetary value has undoubtedly taken place during this time, to which those Rauschenberg entrusted have made a contribution. They understood their task which, simply stated, was to get the artist talked about and to keep the discussion going. This was made possible through publications, exhibitions in galleries and museums, and the placing of work in the right private and public collections. In 2012 alone Rauschenberg's work appeared in more than 25 exhibitions in galleries, collections, and museums around the world. This is certainly easier to achieve for an artist of such caliber than for one of lesser standing. Nevertheless, in addition to knowledge of the work, the market, and the world of curators, the right network is also required. It is frequently gallerists who traditionally offer such services. But here too there is not always a successful outcome. The gallerist who took over the inventory of the New York painter and art dealer Merton Simpson, led the gallery to a forced eviction in 2013, despite an estate valued at over five million US dollars.

This example demonstrates that it can sometimes be more sensible to have one professional agent exclusively representing the interests of the estate, working constructively with galleries, and letting them do what galleries do best, that is sell art. All other responsibilities can then remain under the jurisdiction of the estate. As a result the estate retains its autonomy and is able to seek out the best gallery, that is the strongest one, in the respective market. This could be a different one in the USA to those for the European or Asian markets. The appointment of a gallery corporation such as Gagosian, which has eleven spaces worldwide, is in itself no guarantee of global success, and even a monopoly on the gallery's New York doorstep may not be a forgone conclusion. Whilst the de Kooning Foundation has commissioned Gagosian to dispose of works, his daughter Johanna Lisbeth de Kooning's private trust, which also has a holding of works, decided

to continue being represented by their competitors Pace. Remaining flexible then, is one thing that can be thoroughly recommended.

Key Factors: Museums, Market and Academia

Such a route is affected by three factors: academia, museums and the market. The basis for successfully dealing with all three areas, in the interests of the estate, is the catalogue raisonné. After immediately checking the location of loans from the artist's own collection, the first step should be the creation of a professional record of all the artist's works. Very few artists and executors will be as fortunate as Gerhard Richter, whose cataloging, whilst he remains alive, has been taken over by one of his collectors. Such stocktaking is painstaking and repetitive work, but at the same time it is the best way of thoroughly researching the œuvre. It not only provides a structure for the future, but more importantly a reliable basis for approaching the work. A good example of this is the estate of Jean (Hans) Arp, which has been advised by Fine Art Partners since 2010. Only a consistent approach to the inventory, the complete opening of the archives to independent researchers, and a review of the legitimacy of all the sculpture casts have led to a new start. Today the market has regained confidence in Arp's work and the artist can take his rightful place amongst the 20th century's most outstanding artists.

When the research entailed in creating a catalogue raisonné is as comprehensive as it has been in the case of Arp, it can then generally be considered to be complete. Exceptions being, when it is supplemented by the confirmation of legitimate casts or (apparently) obscure finds, that also require inclusion in the catalogue. Upon the death of the artist the process of production has ended. The most important factor in the appreciation of fine art assets is the scarcity of the commodity. The size of the œuvre and the details of the works of art such as title, dimensions, date, and materials will no longer change, only changes in the provenance of works will continue as the result of each transaction.

As an aside it should also be noted that the creation of such a record of the work, due to the authentication it indirectly implies, entails some risks, which compilers should at least be aware of. This may begin with an enquiry as to whether a hitherto unrecorded work can legally be included in the catalogue, and end with the risk

of litigation for possible damages, if the decision is unfavorable. This is a factor that should not be underestimated, particularly in the USA where all parties are responsible for their own legal costs and was apparently the main reason, according to rumors, why the Warhol Foundation's authentication board ceased its work the year before last. Only in March of this year the heirs of the Geneva art dealer Patrick Cramer sued the Calder Foundation, which complies his catalogue raisonné, because of its refusal to assign a catalogue number to the mobile *Eight Black Leaves*, that Christies were supposed to auction as a distinct and original Calder.

Once the catalogue raisonné has appeared, it forms the basis for any engagement with the artist, not just for the foundation's management but also for academic researchers in particular. The management of the foundation should therefore be regarded as a service provider for academia, with the catalogue raisonné providing the point of departure. Any academic involvement with the artist's work should receive the full support of the foundation; it not only strengthens general perceptions of the artist's work, but also maintains a lively discourse around the œuvre. The custodians of an estate should therefore proactively seek academic contacts, and ideally also suggest ideas for research papers. The quickest and most effective way of achieving this is by the awarding of grants. This need not be limited to just the most obvious art-historical context, but may also be a means of seeking out further scholarly links that are thematically appropriate to an artist's output, and which open up new perspectives on the œuvre.

Academia and museums go hand in hand in this. Exhibitions and museum collections are key sites for reexamining a deceased artist's work, so that it remains lively and compelling, not only for the wider public but also for subsequent generations of artists. From the very beginning the focus should be on working together with museums. After reviewing the estate and producing a catalogue raisonné, it is then advisable to start making specific gifts and loans to museums. Making this initial contact with museums will not only fill any gaps, but also further promote the artist by placing them with collections. However if the estate's work involves pursuing objectives beyond merely distributing its holdings, then such gifts should not exceed 10 to 15 percent of the artist's entire output, and the works and institutions should be selected with care. The inventory of work is usually the predominant source of wealth for financing the estate's overall efforts in promoting the

artist's memory. Making a gift of the entire estate – even if over many years and to diverse institutions – of artists who do not enjoy the world renown of someone like Picasso, does not necessarily lead to any increase in the work's significance, but could rather result in just a noble interment in the museum. For example the US artist David Park, as an outstanding representative of the Bay Area Figurative Movement – a dissenting counterpart to Abstract Expressionism – would today be known to a much wider public, if his widow and her second husband had followed a different strategy. Initially they gifted parts of the estate to various regional museums over a number of years and then left the remainder to the Oakland Museum and the Santa Barbara Museum. Today, they may not have made the same decisions again.

The manner in which models for making gifts can function today, and ideally should, is demonstrated in turn by the Rauschenberg Foundation, who recently launched their Gift/Purchase Program. Consequently, certain US institutions were able to purchase particular works at favorable prices. Six of them accepted the offer. Even if it would appear that Rauschenberg had long ago reach the summit, and the power relations between the Foundation and museums were apparently well balanced, this program concerned the availability of Rauschenberg's late work, from the 70s, 80s and 90s, which generally is not considered to be the most significant of his oeuvre. By granting favorable rights of acquisition for the late work, the foundation however skillfully created incentives for museums, which they could then select strategically. The selection was made in terms of geography and the existing inventory. Similarly to the programs of the Warhol, Motherwell and Mapplethorpe estates, the already favorable purchase prices were deferred over three years, during which time the museums could seek out donors or other sources of finance. These examples are meant to demonstrate the need for artists' estates to have their own strategies for museums. Along with long-term loans, where in contrast to gifts there is no transfer of ownership, this can also take the form of raising awareness through exhibitions. Merely waiting for loan requests will only suffice for a minority of estates.

Finally, the art market is the third column on which any successful undertaking with an estate will rest. This includes, as already mentioned, selecting the right gallery for the right market at the right time, but does not necessarily mean that the work should immediately be offered for sale. If at all financially feasible, merely exhibiting the

work in a commercial space is enough to raise awareness. Art which does not find an audience, will not as a rule, increase in either its significance or monetary value.

The manner in which independent estate management can function, has been demonstrated by one of its pioneers, the American Barry Rosen. For the last twenty years he has represented estates as an independent consultant, including Eva Hesse's, which he has decisively "built up." Following numerous publications and gallery exhibitions in Germany, the USA, and France as well as museum shows in San Francisco, Sao Paulo, London, and New Haven, he decided in 2002, jointly with Eva Hesse's sister, to work together with the Hauser & Wirth gallery, which has since marketed the estate very successfully. In the meantime they are also doing the same for Lee Lozano and Allan Kaprow – also represented by Barry Rosen. Nevertheless the estate's management is still essentially free to act autonomously, that is, to continue issuing publications and exhibit and sell works, if it so desires. In its function as a consultant to the gallery it can control marketing, in the interests of the estate, whilst simultaneously supporting it.

A further good example of successful placement at the upper end of the market is the late work of de Kooning, who has already been mentioned. At the time of his death he was, without question, a star of the art world, but similarly to Rauschenberg, the works that had made him were from the 40s and 50s. The estate consisted mainly of works from the 80s. An already great name as well as the zeitgeist of the art market certainly helped to make these works desirable, but exhibitions of the work in Bonn and New York in 1996, and again at MoMA in New York in 2011, as part of his retrospective, were also in no way detrimental to an appreciation in value. Two years later the Gagolian gallery who, as mentioned above, had been commissioned to sell ten works from these years, achieved proceeds of not less than 30 million US dollars. De Kooning's late works now generate 4.5 million US dollars on average at auction.

Eternity and the Costs – or Costs for Eternity?

No matter who has been entrusted with these responsibilities, one thing remains clear: all this costs money. Accordingly the administrative operation should be kept as lean as possible. Besides management costs, there are particularly those involved in preventive conservation. This encompasses not only appropriate storage but also

ongoing monitoring of the work. The condition of the inventory of art works should be regularly examined, and risk analysis regarding loans and transport should be implemented together with continual improvements to protective measures.

Having clarified initial, possibly still unresolved items of a financial nature, such as tax arrears or other liabilities, undertaking any kind of management of an artist's estate requires the addressing of long-term financial requirements. As far as is possible, the issues as already mentioned above, are best resolved by the artist during their own lifetime. If they neither wanted to nor were able to found a soundly based museum – which is almost exclusively the case – the solution must then generally rest on the sale of works of art. However the consequence of this is that the monetary branch on which it all rests is then being continually sawn away. The main prerequisite therefore, is the establishing of sustainable resources that enable the proper preservation of the legacy, even when the majority of the tangible silverware has been sold. Pending such capitalization – ideally in the form of foundation assets that have been ring fenced – a modern solution could today take the following form: a long-term representational institution mandates an administrator of the estate, one to eventually be dissolved, with placing, promoting, and exploitation of the works of art. Until this mission has been accomplished, the estate management due to their commitment to providing funding not only ensures the existence of the representational institution, but also builds up capital stock for long-term work.

On the other hand, the establishing of a model in perpetuity is not absolutely necessary, if there is any legal flexibility. An increasingly common form in the US – especially for charitable foundations of all kinds – is the so-called “sunset end” model that will eventually arrive at a legally determined end. The managing institution will only exist until their task has been completed, sometimes there is even a definite deadline for its termination. When considered unemotionally, this is a very sensible thought. What is the rationale for its existence once the work has already been examined academically and distributed, and no studio, museum, or family members require further financial support? The foundation's purpose as mere self-preservation is surely never in interest of the artist. The most prominent example of the “expiry model” is the Roy Lichtenstein Foundation; and the sun already set on the Georgia O'Keefe Foundation in 2006.

However, the tasks around the remembering of an artistic life's work do not only rest on the conservation and marketing of physical products. This is only one aspect. These can, of course, be successfully performed even after the liquidation of all artistic assets with new or other remaining objectives. This may involve the promoting of younger artists, or support for further publications on the oeuvre. A good example of this is the Henry Moore Foundation. For some time now, Moore's work has been housed in the world's museums and private collections; nevertheless the foundation's activities, which started work in 1977, continue. Beyond and above the conservation of Moore's own work, it has also adopted the cause of sculpture in general, researching, supporting, and exhibiting it in all its conceivable aspects. This ranges from workshops for children to live performances of experimental dance by Siobhan Davies and Matthew Davies. As a result they have created a *raison d'être* reaching far beyond any eventual exhaustion of focusing solely on the legacy of the deceased artist. The administration of Warhol's estate takes a different approach. For someone who was so decisively influential on the art of the 20th century, and whose reception has exhausted every superlative, there is only one logical conclusion: a bare cupboard. Accordingly, the Warhol Foundation came to the decision to sell all the works, making the proceeds available to non-profit art projects and organizations. As a result history will not only remember Warhol as a great artist but also as a great philanthropist. I think this would have pleased him.

Ultimately therefore it is the deceased, that is the artist, and their stated or presumed wishes, and other aspects such as the size of the estate or the possible existence of family members in need of financial support, that decide how long work will continue to be done in the interest of the artist. The selection of appropriate personnel and devising of a concept should then be made on this basis. The decisive question for all the parties concerned should be: what would the artist have wanted? Do they have everything that the private and public art world demands today? Do they know and understand the art in question, and is that what they are working for, rather than primarily their own personal and financial success? And thus Warhol's quote about death can also be vindicated: “Death means a lot of money, honey. Death can really make you look like a star!”

¹ In collaboration with Karl von Trott (Associate at Fine Art Partners)

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