



# Buying Art Online

## *The Basics*

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Fine art sales have traditionally been managed and conducted through auction houses such as Sotheby's, Christie's and Phillip or via established art galleries and dealers including Gagosian, Leo Castelli, Saatchi Gallery, Pace Gallery, Hauser & Wirth and Deitch Projects. Each year hundreds of thousands attend renowned international art fairs Art Basel, Frieze Art Fair, The European Fine Art Fair, The Armory Show and Biennale Arte and Volta. However, the Internet has democratized and changed the nature of art transactions and collections by providing a global platform for viewing and purchasing works of art. By providing instant access to information about exhibitions, auctions, art sales and prices, the Internet enables new and experienced art collectors unprecedented access to

historical sales information and access to what is available in the art markets through online options to purchase from auctions, fairs, galleries, consigners and directly from artists.

Buying art online may not match the visceral experience of discovering a work of art in person, but it can supplement the experience of admiring art in a museum, gallery or fair. Brick-and-mortar will continue to play a vital role in discovering and collecting art, but as the global COVID-19 pandemic has shown, the degrees to which we socially interact are evolving. These changes in turn drive how we transact business. Many art auction houses, galleries, art fairs and artists have moved online or expanded existing online operations in response to business shutdowns necessitated by

the COVID-19 pandemic. These virtual venues will continue to grow, innovate and provide both sellers and collectors with alternative means of access to traditional and emerging art markets.

While cyberspace and e-commerce may make it easier to research and purchase art, the same considerations and precautions that apply in brick-and-mortar sale transactions apply to online purchases. What you purchase and collect should be driven by what interests and moves you – the magic, drama, whimsy, spirit or ineffable quality of a work. Art collecting is based on an economic model driven by authenticity, rarity and scarcity. Consider the following tips and precautions for smooth and gratifying transactions when buying fine art online as a private collector:



### Do your "homework."

Research the artist, their specific works that interest you, and where the work is sold on-line. Is the artist established or emerging? Have other or similar works by that artist been sold, and at what price? Is the online site an established gallery, fair or auction with a history of buying and selling fine art? How well do they display and describe the art? Who is actually selling the work – is it the artist, a gallery, a dealer, a consigner or private owner through its own or a third-party site? Is the work signed and authenticated? If it's not an original, how is it reproduced – what is the medium and process? If not an original work, is it part of a limited edition or one of a series and how many were produced? Artnet.com is an auction site as well as an extensive online database for information on contemporary artists, and prices paid for sold works. If you're buying from an established and reputable online art gallery or dealer, such as Saatchiart.com or Artsy.net, an art fair or auction house, such as Sotheby's, Christie's or Artnet.com, they often do considerable research about an artist and vetting of a

work in addition to providing information and guidance about a listed work including its authenticity and condition. These dealers provide detailed terms of sale, policies for making a purchase and recourse available to a buyer who is dissatisfied with a purchase. Don't deal with an online retailer that does not allow you to ask questions. You should know about provenance, taxes, shipping, and returns, and insurance and insurability, even if buying from an established online retailer.

### Research the Provenance of the Work.

"Provenance" is from the French word *provenir*, which means "to come from" and refers to the history of ownership and exhibition of a valued work of art or antiquity. Due diligence is vital for high-priced works and antiquities. Fakes and forgeries exist and can be easily passed off as authentic on the Internet. A full provenance provides a documented history that can help prove ownership, assign the work to a known artist, and establish authenticity which is vital to a work's market and re-sale value. The

Art Loss Register (<http://www.artloss.com/en>) is the world's largest online database of stolen art and a great resource to begin researching the provenance of a work, particularly works by old masters or historically well-known artists.

An established online art retail or auction site should be able to provide documented provenance information upon purchase as well as offer a guarantee or return policy for the work if it turns out to be a forgery, stolen, or has a lien on its title. As for ownership, it is important to make sure the work of art is being sold free and clear of all claims and liens by the true owner of the work. A buyer can run an online Uniform Commercial

Code search to see what, if any, liens or encumbrances may exist on the work and can also request representations and warranties as part of any sale documentation attesting to clear title. If you are considering a contemporary work of art, the seller or her agent should provide considerable information on the artist, the medium of the work and its authenticity. The work may be newly offered with little ownership history, but you will want to have a certificate of authenticity that is signed by the artist and carefully consider the site's return and/or warranty policies, if any.

Antiquities that are stolen, illegally excavated or exported from a country are not known until they surface and are reported to be illegally obtained. Be cautious and do your own diligence when considering an antiquity. Work with reputable and experienced online antiquities sellers to lessen your risk of buying a fake or forgery. A reputable online seller should provide reliable information on the provenance of the antiquity and minimize your risk through their own research and vetting process, as well as provide a guarantee or return policy that will refund the purchase price if it's a forgery or if the title is challenged. Also, note the information disclosed on the condition of the item and, if not offered, request a condition report with full disclosures.

Be wary of purchasing from a site that does not provide or offer information on the provenance of work, particularly if it's an antiquity or a work by a deceased artist. Consider carefully whether you will want to purchase a work if you cannot find credible information on its provenance. You may love it, and decide to proceed but realize that it may have little re-sale value, and you may have little to no legal recourse in the absence of fraud against the seller if you purchased it without checking and verifying its history.

An example is a lawsuit involving esteemed film director Steven Spielberg and his purchase of the Norman Rockwell painting "Russian Schoolroom." Spielberg was accused of purchasing a stolen





painting. He was dismissed from the suit when the dealer who sold him the work became the defendant. The dealer was subsequently exonerated when the court determined that the painting had been falsely reported stolen by the plaintiff who knowingly sold it at auction for a profit. Spielberg already had returned the painting to the dealer by the time the lawsuit was settled.

### **Understand the Site's Terms and Conditions of Sale before Buying.**

Read thoroughly and understand the terms and conditions of the online retail site, especially the terms of sale, before you click to make a purchase. Transparency and clarity are key. The terms and conditions should disclose from whom you are purchasing the work and the specific terms of sale such as the total price, commissions and payment terms. They should answer questions such as: Are you responsible as buyer for paying any commissions, taxes on the sale, shipping, insurance or tariffs? What documentation will you receive? Who is responsible if the work is not received by you, e.g., seized by customs, lost, or damaged in transit? Is it shipped with insurance and how is a claim to be handled?

Our firm represented a Virginia woman

who was enamored with a Picasso plate while dining in one of Michael Stillman's restaurants in New York City and asked the waiter if she could purchase it. The waiter spoke with Stillman, a price was agreed and a check was written on the spot. It turned out that a dishwasher wrapped the plate in paper and put it in a FedEx box. No insurance was purchased and the plate arrived in several pieces. After much negotiation, a replacement plate was obtained and traded for the damaged one.

If after seeing the work in person, you change your mind – can you return it? Is there a return policy and/or dispute resolution policy? Typically you can't return a work of fine art without cause, but some online galleries, art fairs and retail sites may make allowances because you can't view and examine the work in person prior to buying. Others afford these rights because of applicable law. In the European Union, online art retailers may allow a buyer a "cooling-off" period to cancel a contract of sale without reason in accordance with applicable EU "distance-buying" laws. An EU buyer would notify the online seller that they no longer want the work and return it for a refund.

### **When to Consult an Attorney – Disputes about Provenance, Art Seizures, Forgeries, Challenges to Title and Damage.**

The main areas of risk when buying fine art are ownership and authorship of the work. The monetary value of a work of fine art depends on its authenticity and clear title. The terms of sale should make it clear who bears the risk if the work is not authentic or the title of ownership is contested. Ideally, you want the seller to guarantee the authenticity of the work and clear title and provide a full refund if it's a forgery, there is a lien on the work

or it was illegally obtained. Our firm represented a Chicago couple who had their vacation home in Florida burgled. It was crammed with antiques, including a rare Heriz rug. Several years later they saw the same rug on offer in a Sotheby's auction catalog. While Sotheby's had a bill of sale from a local Florida businessman, the bill was forged and we managed to recover the stolen rug.

Generally, buying from an established auction house is less risky because they are state-regulated and their staff conducts critical due diligence on provenance and vetting of works of art prior to sale. They typically will take a work back within five years of sale and provide a refund if the work is found to be inauthentic. Additionally, domestic auction sales are governed by the Uniform Commercial Code which affords both sellers and buyers legal rights and remedies for a breach of sale. In a private sale, the type and depth of due diligence and vetting done on a work prior to sale will vary by dealer or seller. In certain circumstances, the law provides a buyer a right of rescission within four years if a work is found to be inauthentic and other laws of contract, fraud, or negligence may apply. It is difficult to recover from a gallery or dealer if it is financially unstable, going out of business, evading contact, or lacks the liquidity to refund payment for an inauthentic work.

Consider consulting an attorney to understand your rights and avenues of recourse if you cannot satisfactorily resolve a dispute regarding the purchase or sale of a fine work of art. Also, consult with an attorney for payment and insurance coverage disputes, a damaged or forged work, provenance disputes or suspected fraud.

*This article is not intended to be a source of legal advice for any purpose. Should you need legal advice on contracting for the sale or purchase of fine art or potential recourse for resolving an issue regarding a work of art, please contact us at Kent, Beatty & Gordon, LLP.*