ARTICLES

# "Brother, can you spare a Monet?" What Do You Need to Know About Lending Art?

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Sharing is a satisfying party of collecting art. After you've thoughtfully assembled a collection over the years, you'll likely find it a thrill and a pleasure to have that work acknowledged, in the form of an invitation to share it. So, let's say you have been approached by your favorite gallery or museum; its curators are interested in showing your collection. Or, better yet: You've been contacted by a national gallery. After the initial excitement wears off, you now face questions of how to protect your collection while it is being exhibited. Because you're dealing with an established institution that does this all the time, you might assume that issues like property and liability coverages will just take care of themselves. Sadly, that's not the case. For example, the gallery or museum might provide you with a certificate of insurance indicating that your loaned items are covered under its policy. So, should you request removal of those works from your own policy in order to obtain a return premium? Maybe not.
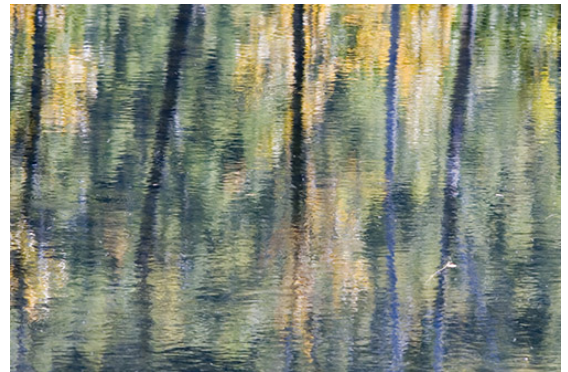
Instead, your fine arts insurance broker needs to thoroughly review the museum or gallery's policy to ensure it is as broad as yours. Does the new policy have exclusions, such as terrorism or earthquake, which yours does not? Does the value of your art exceed the museum's policy's limit?

More fundamentally, are the savings you'll receive on a return premium for the length of the exhibit worth your transferring the risk to the museum? After all, if there is a loss, you will have to settle the claim with the museum/gallery's insurance company, not your own. And that insurer may not have the same motivation to settle the claim as your own insurance company would. Clearly, risk management when lending artwork can get complicated. Here's a short list of actions to take before the first piece gets packed:

- Create a loan agreement outlining your insurance requirements for the borrower.

Work with your lawyer and fine art insurance broker, and try to always use your loan agreement, if possible, as it will best protect your interests.

- Ask your lawyer if you need a Uniform Commercial Code (UCC) to protect your artwork.
- Request a certificate naming the beneficial owner of the artwork (you, your LLC, trust or family

foundation) as loss payee and additional insured (or a waiver of subrogation if an additional insured is not available).

- Have your fine arts insurance broker review all certificates of insurance submissions to ensure that your loan agreements are met
- When reviewing a borrower's insurance or certificate of insurance, look for terrorism, earthquake and windstorm to flood coverage, plus a carrier known for fine arts insurance and for its cooperation in paying claims.
- Require a policy review when lending outside of the country, taking care to note special conditions and subjectivities. International policies often have more restrictive coverage than a U.S. fine art insurance policy.
- If the borrower's insurance doesn't meet your requirements, you could:
    - 1. Use your own insurance policy's "At Other Locations/In Transit" limits.
    - 2. Get a separate exhibition policy through your broker and charge back the borrower. This protects your claims history while providing access to your own broker and insurance company plus familiar policy language and terms.
    - 3. If it's an option, allow the borrower to use government indemnity.

PACKING AND SHIPPING

The leading cause of loss to fine art is damage occurring during the packing and shipping process. Make sure your art is fully covered while in transit by either the borrower's insurance or your own. Also, make sure your loan agreement specifies which company will be handling the removal, packing and shipping of your artwork and ensure that the shipper/packer has expertise in these areas. The list above might seem daunting, but don't let it deter you. With advanced planning and proper insurance advice, a low-risk path to lending a prized piece or collection can be mapped out.

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