



ORIGINAL RESEARCH AND INNOVATIVE APPRAISALS[®]

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Once in a while, and these occasions don't occur with great frequency, the personal property appraiser is asked to take on an assignment for which there is no precedent, no standards set by USPAP, no guidelines provided by his or her professional association, and very little reference to the subject in other disciplines.

Such a situation arose earlier this year when we were approached by the director of a trust to provide:

- A. fair market value^[1] appraisal,
- B. replacement value^[2] appraisal

^[1] Fair Market Value – The price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. Because auction sales are publicly recorded, these are the values deemed to be most appropriate in finding prices for properties in tax related reports and in cases where dispersal of properties is involved. The fair market value assumption is that the value stated is the substantiated price (realized price) that would be paid by the buyer at auction for a comparable property. When there are no appropriate auction records to be used as comparables in determining current value of property, the most common market for the item might also be deemed to be a source for verified replacement value of a comparable property sold through a primary source. Fair Market Value is the monetary standard used as the basis for appraisals for charitable contribution, estate taxation, and equitable distribution.

^[2] Replacement Value – The price required to replace a property with another of similar age, quality, origin, appearance and condition, within a reasonable length of time, in an appropriate market. Intangible provenance value is additive when appropriate. Because of the time limit involved, the appropriate market for replacement is deemed to be that of primary sources, such as department stores, galleries, and shops carrying comparable and immediately available personal properties. If the only source for replacement can be demonstrated to be that of auction, that is the source utilized. Replacement Value is used

C. fair market/replacement value leasing fee

Twice before the issue of art leasing had come up in this appraiser's experience. The first time the family attorney had advocated for a specific outcome and we declined to pursue it. The second time it was the client, not the attorney, who wanted control of the process and methodology. With such pressure there was no way that a successful outcome could emerge and we declined to pursue it.

This time the task of providing guidance on the issue of art leasing was possible due to a client with no predisposed agenda who genuinely wanted the most honest and appropriate resolution. Additionally, the client had respect for the professionalism of the appraiser, and confidence in her ability to develop a coherent and successful methodology in order for an innovative idea to take root in the appraisal field.

It was the function of the appraiser to determine, not only the two valuations, but also to provide a rationale for the fee to lease these works of art on a six-month and a yearly basis that all participants would agree was applicable. Not only would the executors of the trust have to be convinced, but so would the collector, in whose home the art was displayed. A fee that we ultimately determined to be appropriate must also be sufficient to satisfy the members of the trust and at the same time not be considered onerous to the collector.

The subject work was that of twenty paintings, located in a private home and also in a museum on a loan basis.

The trust owned 95% of the art, and the former owner, in whose home the art was located, owned 5%. The 5% owner had been the original

as the basis for insurance purpose and damage/loss reports, as well as in certain types of litigation cases.



collector of the artworks and, while agreeing to allocation of the shares to the trust, opposed the sale of any of the paintings. The leasing agreement offered the opportunity for the collector to continue to house and display the art, with the trust as beneficiary of the rent.

Initial Analysis

The twenty paintings in the collection were by established American artists. Therefore, the appraisals for both fair market and replacement value presented no obstacle, although the timing of the appraisal followed shortly after a steep decline in the art market, which was reflected in the valuation.

It was the third, and most crucial, component of the assignment that called for a creative approach and, most importantly, original research.

While the tracking of both auction and retail prices is considered straight forward data collection, research is hydra-headed, allowing for source-based research that includes both secondary and tertiary sources.^[3] The third type and most attestive of sources – primary – signifies an original source, that is, a source at the time of or close to an event, such as diaries, historical documents, verified surveys, eye-witness accounts, and interviews. In other words, first hand research. In this instance, that of defining leasing fees, we chose to rely upon surveys and interviews to achieve our goal.

During the analysis of this particular assignment it was our conclusion that original research was required, but there would as well be data collection combined with secondary and tertiary sourcing.

^[3] Secondary sources, generally accredited publications, rely for facts upon primary sources; tertiary sources for the most part summarize secondary sources and as such are found in encyclopedias and text books.

Scope of Work

- 1) On-site examination and photography of each subject work
- 2) Identification, description, and analysis of subject properties
- 3) Data collection of both realized auction prices and replacement prices in current market
- 4) Determination of current fair market and replacement values
- 5) International research on current art leasing
- 6) History of fee-based art lending/leasing
- 7) Comparisons in fee structure with art lending organizations worldwide
- 8) Interviews relating to current leasing arrangements
- 9) Fees developed for insurance as of six months and one year
- 10) Determination of appropriate six-month and one year leasing fee for each individual property
- 11) Consultation on sale/leasing/exhibition potential of subject works
- 12) Photographs of each subject work
- 13) Provenance of each subject work
- 14) Background information provided by Client
- 15) Access to spaces in which paintings are held, both private and institutional

Procedures

On a given date a representative of this firm flew to the location of the collection to examine, photograph, and note all information relevant to the matter.

A. History of Art Leasing (Summary)

Art lending in the United States began in 1936 at an Ohio museum, and progressed in the 50s, 60s and 70s throughout the country. Much museum art lending had been discontinued because of high administrative costs. The most successful of these programs serving as a model for subsequent



organizations was the Art Lending Service established in 1951 at New York's Museum of Modern Art (MOMA). The MOMA service offered artwork priced between \$25 and \$750, and charged a monthly rental fee of between \$5 and \$52 for a maximum period of three months. Among works rented were paintings, drawings and sculptures by Hans Hofmann, Robert Motherwell, Jacques Lipchitz, Marc Rothko and Jackson Pollock, work which could also be purchased after a "trial period". More recent programs by the Whitney Museum in New York, and the Philadelphia Museum, have been discontinued. *Extensive information about this phenomenon was detailed in the full report.*

B. Current Policies for Art Rental/Leasing – National Organizations (Summary)

Telephone and email contacts were made both nationally and internationally to museums and institutions in order to locate sites of art lending. When located, it was found that typically their fee structures were based on an inverse sliding scale in that the more expensive work incurs a lesser percentage fee, not unlike the fee structure of auction houses and galleries worldwide. It was found that many of the smaller operations allow leasing fees to be allocated towards ultimate purchase. *This extensive survey yielded a surprising number of art rental sites and a variety of fee applications.*

C. Current Policies for Art Rental Leasing – International Organizations (Summary)

An international survey was conducted via email and telephone. Art rental sources were located in Canada, Europe and Australia. This far-flung survey yielded surprising information, such as flat fees, the renting of artworks worth up to \$5 million and in some instances the

exclusive lending to institutions rather than to private individuals. Several dozen organizations were contacted. *Numerous Canadian organizations rent art of substantial value, although the fee structures were in line with those found in the United States and abroad.*

D. Charts Outlining Rental Practices (Summary)

A chart was created that provided the names of a limited number of relevant organizations in our survey - museums, government sponsored, artist-run, and privately controlled groups, together with their fee structures. It described the types of services available at that particular organization; the length of time leasing was allowable, the fee for that period, and the range of values and number of works allowed to be leased at any one time. *In-depth research yielded a four-page chart divided into several segments.*

Summary and Conclusion

The international survey of art leasing institutions, museums, and small businesses was as thorough as we could conceive and provided a wide range of leasing fees that ran as low as 1% and as high as 13%, with the average for museums among the lowest. After very carefully reviewing all the figures, and considering that the majority of lenders offered to lease or lend paintings that were far below the value of the subject works owned by the Client, we determined two different fees, one for a six-month lease and one for a yearly lease. This was done at the request of the Client so that the collector and the trust could decide which term was more appropriate.

To assist in arriving at fees that were in line with comparable leasing arrangements and after comprehensive research two tables were constructed to present the results of the research. The paintings were listed in alphabetical order by artist's name (redacted here for reasons of



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privacy), together with their current replacement and fair market values, for both yearly and half yearly periods.

It was then determined that an appropriate fee structure could be established based on comparable fees internationally researched. The percentages utilized for replacement value were for work under a specified amount, and those over; this was repeated, using fair market value.

The higher percentages applied to fair market values were based on industry practice of using higher percentage fees for lower priced work

(either at auction or in private sales), and generally higher percentages for lower priced work utilized by commercial art lending establishments.

Research was undertaken to determine fees in various areas other than that of art, such as the insurance field, to locate what that industry charged for shorter term rates when insuring artworks. There is an additional incremental cost for short term coverage. Therefore, we set additional incremental points for the shorter lease.

Artist	2009 RV	RV Percentage	Suggested Yearly Leasing Fee	Suggested Six Month Leasing Fee
A	\$170,000	2%	\$3,400	\$2,550
B	\$50,000	3%	\$1,500	\$1,000
C	\$800,000	2%	\$16,000	\$12,000
D	\$125,000	2%	\$2,500	\$1,875
E	\$25,000	3%	\$750	\$500
F	\$225,000	2%	\$4,500	\$3,375
G	\$400,000	2%	\$8,000	\$6,000
H	\$400,000	2%	\$8,000	\$6,000
I	\$35,000	3%	\$1,050	\$700
J	\$100,000	2%	\$2,000	\$1,500
K	\$20,000	3%	\$600	\$400
L	\$30,000	3%	\$900	\$600
M	\$75,000	3%	\$2,200	\$1,500
N	\$120,000	2%	\$2,400	\$1,800
O	\$40,000	3%	\$1,200	\$800
P	\$85,000	3%	\$2,250	\$1,700
Q	\$1,500,000	2%	\$30,000	\$22,500
R	\$150,000	2%	\$3,000	\$2,250
S	\$250,000	2%	\$5,000	\$3,750
T	\$75,000	3%	\$2,250	\$1,500
Subtotal	\$4,675,000		\$97,850.00	\$72,300.00
REDUCED BY FIVE PERCENT INTEREST			(4,892.50)	(3,615.00)
TOTAL			\$92,957.50	\$68,685.00

Table I – Using Replacement Value



Artist	2009 FMV	FMV Percentage	Suggested Yearly Leasing Fee	Suggested Six-Month Leasing Fee
A	\$90,000	4%	\$3,600	\$2,250
B	\$30,000	4%	\$1,200	\$750
C	\$500,000	3%	\$15,000	\$10,000
D	\$70,000	4%	\$2,800	\$1,750
E	\$10,000	4%	\$400	\$250
F	\$110,000	3%	\$3,300	\$2,200
G	\$175,000	3%	\$5,250	\$3,500
H	\$250,000	3%	\$7,500	\$5,000
I	\$15,000	4%	\$600	\$375
J	\$65,000	4%	\$2,600	\$1,625
K	\$8,500	4%	\$340	\$212.50
L	\$2,500	4%	\$100	\$62.50
M	\$30,000	4%	\$1,200	\$750
N	\$35,000	4%	\$1,400	\$875
O	\$15,000	4%	\$600	\$375
P	\$35,000	4%	\$1,400	\$875
Q	\$850,000	3%	\$25,500	\$17,000
R	\$60,000	4%	\$2,400	\$1,500
S	\$75,000	4%	\$3,000	\$1,875
T	\$40,000	4%	\$1,600	\$1,000
Subtotal	\$2,466,000.00		\$79,790.00	\$52,225.00
REDUCED BY FIVE PERCENT INTEREST			(3,989.50)	(2,611.25)
TOTAL			\$75,800.50	\$49,613.75

Table II – Using Fair Market Value

The assignment occupied four members of this firm numerous hours over a period of approximately three months, the length of which made necessary by the extensive interviews required by the survey. There were many call-backs to verify information, and a constant monitoring of figures that were incorporated into the charts. The section of the assignment related directly to art leasing was Part II; Part I encompassed forty formal appraisals, twenty at fair market value, and twenty at replacement value.

The cooperation of the Client, who allowed our staff the time necessary to thoroughly research primary sources, proved invaluable to the

successful conclusion of the assignment. Soon after, in sharing our findings with museum executives, the Client informed us that the museum representatives were surprised and pleased with our findings and with the possibility of a revival of this art lending practice that might provide new sources of revenue for museums.

Opportunities to initiate primary sources for an appraisal assignment are rare, but allow the profession to move forward in setting precedent, not unlike that which the courts undertake in creating new laws. To achieve parity with other professions, such as the law, it is mandatory for personal property appraisers to raise the bar in their own profession by taking on assignments



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that demand original research and new ways of addressing persistent valuation problems that have never been satisfactorily resolved. To do

this would create a body of case studies upon which all appraisers in future could rely.

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Dr. Lake-Ewald has been qualified as an expert witness in federal, criminal, state, circuit, bankruptcy and tax courts, testifying in both civil and criminal court cases. Dr. Lake-Ewald is an American Society of Appraisers (ASA) certified senior appraiser; Royal Institution of Chartered Surveyors UK. Dr. Lake-Ewald can be reached at info@otoole-ewald.com
