

# Property Journal

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# The parting of the ways

**Elin Lake-Ewald** looks at how appraisers in the USA value personal properties in matters of equitable distribution

**W**hen marriages are dissolved in the USA there are two ways in which fine art, antiques, rugs, silver and other personal properties are distributed between the warring parties – through community property or equitable distribution. (And by the way, debts are divided according to the same principles.)

In 11 states, including Alaska and California, community property is divided equally between the spouses, with each spouse keeping his or her separate property. It is a 50-50 situation. In the remaining 39, including New York and Florida, assets and earnings accumulated during marriage are divided fairly, but not

necessarily equally. Several factors are taken into consideration.

The presiding judge may award each spouse a percentage of the total value of the property in which each spouse receives properties (and debts) whose total worth adds up to his or her percentage. In that case the wife may get the house while the husband gets cash equal to his percentage value of the home.

## The 'divorce sandwich'

In the majority of cases when a couple is splitting up, the two parties usually attempt to come up with their own inventory of items to be divided. But if they cannot agree on such issues as how to divide a marital home, the judge can

order them to sell the house and divide the proceeds. Of course, the same action can be applied to a 17th century painting, a Georgian armchair, a set of Jensen silver, or Jeff Koons' balloon sculpture. That is why there are auctions in which entire households of goods are placed on the block. Divorce is sandwiched between death and debt as one of the three great supports on which auction houses are built.

It is difficult to be precise about how frequently personal property appraisers are called on to provide expertise in matrimonial cases, but from the experience of this firm I would estimate that out of every 1,000 divorces across the US, only about 5% at most require the services of a fine art or decorative art

specialist or team of specialists. But when that happens, it is often a very big job involving major artworks, artefacts, and various noteworthy collections, and may include those personal properties spread among two or more locations, both in the US and beyond.

Even if the fee for the assignment is modest there is another aspect to consider, i.e. the sale of the items following the appraisal. Although some items may be offered to private dealers, it is usually the auction houses that are willing to accept multiple and unrelated objects to be sold over what can be an extended period of time. In these cases, the appraiser receives a negotiable fee from the auction houses, usually 4%. This low fee is a sensible strategy for appraisers who base their businesses on this turnover rather than on professional appraisals alone.

Auction houses themselves often do not charge for such an appraisal if it is likely that the merchandise will be given to them for sale. If there is other material in the residence that does not rise to the level of that particular auction house, there is invariably a lesser house on standby to accept the goods. Other independent appraisers will charge only for the time required to seek out the best source for disposal, following through until the sale has been completed.

### Fair market value

Fair market value (FMV) is the basis for the prices placed on the work being assessed, i.e. the price that a comparable item would achieve currently on the open market, invariably auction because it is a public forum. This includes the commission paid by the buyer, just as in estate valuations. If divorcing couples can afford to call on appraisers for their services, they are also collectors who usually own fairly important pieces of art or antiques. Values of important and well-documented art and antiques are relatively simple to locate; however, there is always the exception.

Take, for example, a married couple's purportedly 18th century American chest-on-chest for which Mr X was persuaded by Mrs X's decorator to pay \$35,000. It fitted in beautifully with the decorator's concept and looked pleasing between Ammi Phillips double portraits, which on closer inspection by the appraiser, had been vastly over-restored.

When the appraisal was submitted Mr X flew into a rage. The \$35,000 he



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paid for the chest had been given an FMV of \$12,000 as being 'in the style of' and denuded of the decorator's commission. Meanwhile, the paintings, for which he paid \$350,000, now had an FMV of \$50,000. This meant that his two classic cars, which he had kept in prime condition, a Ferrari 250 Testa Rossa and a 1936 Bugatti Type 41, were worth far more than the painting and chest that his wife intended to keep because they looked good in the meticulously decorated residence. He would have to come up with more cash to make the transaction equitable. Mr X's fury had perhaps less to do with the money he was losing than the fact that, as a successful businessman, he had come out looking rather foolish.

### High drama

Other things happen in these types of appraisals. One couple, married almost 40 years, most of which must have been spent fighting with each other, followed a group of appraisers from room to room,

screaming at each other about matters having nothing to do with furniture or prints, but apparently in need of an audience to fuel their drama.

And drama it can be, and quite frequently major performances. In a recent case, four of our staff drove for four hours to the beach house of a separating pair. On arrival, they found the door locked and the wife shouting threats from an upstairs window, followed by an arranged emotional breakdown and dismissal, which meant a four-hour return journey. It took a month for the lady of the house to regain sufficient composure to allow us back inside the house, but only permitting heavily restricted hours on site, which meant the appraisers were scurrying around to photograph, describe, measure and inspect several hundred items. There were no apologies, of course.

Then there was the case of the husband whose dearest wish was to retain his collection of several thousand penguin figurines in every conceivable size, material (ceramic, glass, wood, stone, fur, metal, cardboard, plastic), colour and country of origin. The creatures covered every shelf on every cabinet, appeared on every table-top and almost seemed to have migrated to every space on the floor that was protected by furniture legs. They ranged from minute penguins less than an inch high to a stately life-sized penguin. (This latter pathetic creature was propped up on a hall chair during the onsite appraisal inspection, watching mournfully as the specialists – although none specifically expert in the study of penguins – went about their business.)

# DIVORCE

It was a daunting experience, not just for the appraisers, but for the wife who complained that her husband had given up his job to devote himself to his penguin collection and thus depended on the patience of his (human) mate to sustain his obsession. In a very sad conclusion to the case, ultimately the husband was forced by the court to sell the collection and divide the proceeds.

This case was followed by one in which a very angry wife followed the appraisers around the apartment, videoing their every move and asking trick questions to trip up the experts. The object of the exercise was to demonstrate their incompetence to the court. She hoped that this would halt divorce proceedings so she could continue living in luxury accommodation for as long as possible. Although the ploy failed, the appraisers were left for several weeks with jangled nerves and 'divorce-appraisal phobia'.

The worst situations are those where the children are left to observe the appraisal inspections; they wonder what is going on and know that something is wrong, although no-one has actually told them. In one case, a furious, abandoned wife had coached her 11-year-old son to follow the appraisers around the grand apartment, telling them of the terrible things his father had done to his mother. We never understood what good it could possibly do either her or her son.

Art became entertainment in one Connecticut divorce trial. The dispute was about who owned an Ad Reinhardt painting and the judge seemed unusually interested in the appraiser's brief explanation of why this seemingly all-black canvas held such significance in the art world. As the testimony came to an end, the judge looked at his watch and informed the jury that there was still an hour left until the court recessed and that he would like the appraiser to spend that hour lecturing the court on

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the history of abstract expressionism. Fortunately, the appraiser had written her doctoral dissertation in part on just that and continued as instructed. At the end of the day, she asked the chief clerk why she had been the day's entertainment. "The judge is bored out of his mind with the divorce cases he hears all day. He needed something to take his mind off all those same old arguments. Art seems to soothe him," she was told.

### Can it be amicable?

Are there any relatively pleasant equitable distribution assignments?

The answer has to be "no" if even one of the pair, or the relatives or best friends of either of them are present. When tackling such an assignment, we recommend that the appraiser suggests that the housekeeper, secretary, manager, gardener, or other neutral lets us in, shows us around and leaves us alone, only returning when the job is done.

But remember that the divorce is not always finalised when the onsite inspection is finished, the research completed and the report submitted. There is always the chance that the appraiser may end up in the witness box explaining why the Kelly bag is worth \$50,000 FMV when the attorney's own wife is considered extravagant for paying \$500 at Neiman Marcus for her best pocketbook. Or why the

Neo-Expressionist painting is now worth a third of the value at fair market than the couple paid for it 22 years ago.

Many people outside the appraisal profession take it for granted that the value of a work of art always goes up. The public have read too many stories about the \$30 Tiffany lamp that granny bought 80 years ago that is now worth 3,000 times as much in today's prices. It never seems to occur to someone who paid \$250,000 for an abstract oil painting 30 years ago that its school of art might have gone out of favour, or that an inherited watercolour has deteriorated without notice. Consequently, neither is worth half as much today as they were when purchased or inherited. Besides, how many know the difference between fair market and replacement value anyway?

Divorce appraisals are not always regarded with enthusiasm by some appraisers, but they do provide an instructional message to all. Forget about the sad situation and leave the penguin collection to one side. Sometimes, it is better to just grin and bear it. **A**

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