

Not Keeping Records of Your Purchases and Sales, Location, and Authentication Documents – Implications of Restrictions and Patrimony

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This is Part 7 in a Series of the Top 10 Mistakes Made When Planning for Art and Other Collectibles: A Guide for Professionals and Their Clients.

The provenance of any item is essential to determining its value. Proper documentation of an item's history and proof of chain of title help establish authenticity, ensuring the highest fair market value at the time of sale. It also prevents clients from wasting money on items later found to be inauthentic.

A complete record of an item's history and chain of title should include the item's current location and any restrictions on selling or moving the item. This is particularly important when the asset holds historical significance, and the client plans to transfer items between jurisdictions with high taxes on the sale or use of art and collectibles.

Understanding the limitations of an item's sale or transfer can be crucial. Limitations on the use of artwork, as well as patrimony claims often affect the value of an item. For example, in the Estate of Ileana Sonnabend case, Ms. Sonnabend, an art dealer, owned Robert Rauschenberg's *Canyon*, a collage featuring a stuffed bald eagle. Federal laws prohibit the possession or trafficking of bald eagles, dead or alive, making the artwork unsellable – although Ms. Sonnabend's gallery had received a permit allowing the work to be loaned and exhibited during her lifetime. On the federal estate tax return filed for the estate, *Canyon*'s value was reported as zero. The IRS Art Advisory Panel challenged the valuation, asserting a \$65 million fair market value under the assumption that it could be sold on the illicit market to "a recluse billionaire in China." After litigation, the estate resolved the issue by making a long-term loan of *Canyon* to MoMA in New York City, receiving a full charitable deduction for its full value.

Many nations and communities advocate for the return of artworks that hold historical, spiritual, or national significance, arguing that these pieces were taken under coercive or unethical conditions. Patrimony claims often center on the rightful ownership and cultural heritage of works that have been displaced, looted, or unlawfully acquired. Museums and private collectors frequently face both legal and ethical dilemmas when addressing repatriation demands. The most high-profile case involves the *Elgin Marbles*—renowned Greek sculptures removed from the Parthenon in Athens and currently housed in the British Museum. A UK parliamentary inquiry in 1816 concluded that Britain had legally acquired the *Marbles*. However, in 2000, the Greek government, in anticipation of the opening of the new Acropolis Museum in Athens, formally requested their return. In 2013, Greece sought UNESCO's mediation between the Greek and UK authorities regarding the *Marbles*' return, but both the UK government and the British Museum rejected UNESCO's offer to intervene. In 2021, UNESCO asserted that the UK had an obligation to return the *Marbles* and called on the UK government to begin negotiations with Greece. Despite these developments, the controversy remains unresolved. At the Parthenon Museum in Athens, a portion of the original *Marbles* are on display with white casts held in place of the *Marbles*, which are still currently on display at the British Museum.

While not every client owns artwork as unique as *Canyon* or the *Elgin Marbles*, understanding the nuances of a client's collection is essential for proper representation and estate planning. Every client should keep clear and accurate records that include the acquisition date of each item, its location, and any restrictions on its use.