



Australian Artists Association Newsletter

Volume 2, Issue 1, Autumn 2009

Level 5 / 574 St Kilda Road Melbourne 3004

Email aaa@lowensteinsarts.com.au

Tel +613 9529 3800 Fax +613 9525 1616

Patron John Olsen OBE AO

Directors Melbourne Rick Amor, Bruce Armstrong, Emily Floyd, Robert Jacks AO, Matthew Johnson, Tom Lowenstein, Evan Lowenstein, Mark Schaller, Jan Senbergs AM

Directors Sydney Colin Lanceley AO, Adam Micmacher, Peter Pinson OAM, Ben Quilty, Wendy Sharpe, Tim Storrier AM, Rob Robertson-Swann OAM, Margaret Woodward, Michael Zavros

WHY BE A MEMBER:

The Australian Artists Association (formerly the Painters and Sculptors Association) was formed in 1984. 2009 marks our 25th anniversary!

As you may recall, the AAA was officially established as a lobby group representing the needs of professional artists. Our initial challenges included lobbying the Minister for the Arts in relation to artists donating artworks; working closely with the National Association for the Visual Arts (NAVA) and Arts Law on submissions to the Government and the Tax Office. Our efforts spanned the subjects such as the GST, the PAYG system, losses from non-commercial activities, as well as the unique nature of carrying on business as an artist.

In addition to our lobbying role we have also assumed the role of a peer group body, paying tribute to a number of artists for their outstanding contribution to the arts. Feedback tells us that our social events are popular and regarded as an important catalyst for the creative community as well as valuable public exposure for the AAA membership.

We are keen to hear from our members and value your input into AAA's future direction, so please email us at aaa@lowensteinsarts.com.au and feel free to air your ideas with us!

AFFORDABLE FINE ART INSURANCE

In the view of the recent devastating bushfires in Victoria, the following information might be of interest.

In conjunction with Consolidated Insurance and HSBC Insurance Brokers in London, we are pleased to advise that after several months of negotiating with Lloyds Underwriters, we have been successful in negotiating comprehensive All Risks protection at very affordable premium terms on behalf of members of the Australian Artists Association.

This facility provides cover for artists' individual personal collections of their own works, works for sale and even work in progress whilst at the artist's studio or residence, during transit to galleries and for temporary stays, restoration, and photography.

The cover is provided under a special Fine Arts All Risks policy wording, which includes cover for such events as Fire, Storm, Earthquake, Accidental and Malicious damage, Impact, Explosion, and a whole host of other policy coverage PLUS Burglary and Theft. For example:

SUM INSURED

\$500,000 (minimum)
\$1,000,000
\$2,000,000
\$3,000,000
\$4,000,000

PREMIUM APPROX

\$1,250 + \$250 establishment fee for 1st year
\$1,600 + \$250 establishment fee for 1st year
\$2,000 + \$250 establishment fee for 1st year
\$2,500 + \$250 establishment fee for 1st year
\$3,000 + \$250 establishment fee for 1st year

Basis of valuation for collections can be pre-arranged with underwriters (e.g. 50% or Retail Value), so in the unfortunate event of a claim, there is no argument as to what the true value of the artwork is.

I am sure you will find this facility of interest. For further information, please telephone Geoff Lapish at Consolidated Insurance Agencies on 03 9557 2976.

SOME ADVICE FROM TOM LOWENSTEIN REGARDING WILLS AND ESTATES

Over the past few years, I have been confronted with numerous problems in my capacity as Executor, mediator, and / or advisor to Deceased Estates. Many of the problems that occurred arose from homemade Wills, and sometime from Wills prepared by lawyers. In some instances, it was impossible to carry out the wishes of the Deceased due to technical / legal reasons or as a result of lawyers who had not been properly briefed by the accountants as to the financial situation of the client. In other instances, problems arose when properties left to beneficiaries were not actually owned by the Deceased but instead belonged to a company or a Trust. There were also some situations where the assets left in the Will no longer existed, or had already been gifted during the Deceased's lifetime.

When preparing a Will the most important aspect is that both your accountant and your solicitor are consulted and are fully aware of your assets and their location. In the first instance you should consult your accountant and obtain a comprehensive list of your assets and liabilities, including the date that the assets were acquired, as there could be possible Capital Gains Tax implications. You should also ask your accountant to prepare a chart of your business structure and to provide your solicitor with copies of Trust Deeds and company documentation, to establish in what way the control of these entities is exercised.

It is also necessary for you to prepare a comprehensive list of your beneficiaries, including children by previous marriages or others who could claim to be your dependents. Ideally, you should meet with your accountant and solicitor as a part of the preliminary discussion to ensure that they communicate with each other and are fully informed of your circumstances.

In case of artists where a large part of their estate is in the form of artworks, special considerations need to be addressed.

If you would like to find out more regarding the financial implications of making a Will and Estate planning, contact us for further information regarding this article.

EXTRACT OF TOM LOWENSTEIN'S RECENT SUBMISSION TO THE MINISTER FOR THE ARTS REGARDING THE "INTEGRITY MEASURES" RULINGS OF 2000 AND 2005 AFFECTING THE VISUAL ARTS SECTOR

In my capacity of Executive Director of the Australian Artists Association, I am making a submission regarding the "Integrity Measures" of 2000 and 2005, which affect the Visual Arts Sector.

In brief, in June 2000, the Government introduced "integrity measures" [regarding losses from non-commercial activities] which are having serious consequences for some artists. This legislation precluded artists from claiming losses from such business activities, unless they met one of four criteria: assessable income had to exceed \$20,000; a profit had to be made in 3 out of 5 years; assets utilized in the business have to exceed \$100,000; utilized real estate had to exceed \$500,000.

Subsequent amendments enabled artists with income from other sources of less than \$40,000 to offset their art business losses against this other income.

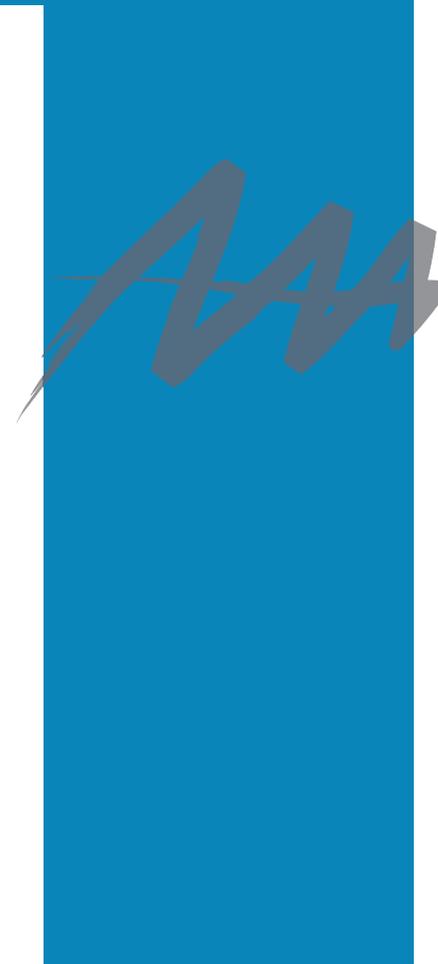
In 2005 a further ruling was issued by the Australian Taxation Office, which set the criteria to define whether an artist is "carrying on a business as a professional artist."

It seems a travesty of justice, if an artist meets the criteria to determine that he or she is carrying on business as a professional artist, that these artists have then to meet the additional criteria mentioned above.

There is no justification in putting additional conditions on artists' ability to claim legitimate business expenses, once they have established that they are carrying on business, as a professional artist.

The Legislation has the effect of penalizing the artists for their lack of financial success, which, I am sure, is not the intention of the legislators. The current economic situation can only add to the difficulties experienced by the artists.

Read the full submission on www.lowensteinsarts.com.au



EXTRACTS OF TOM LOWENSTEIN'S RECENT SUBMISSION TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION (ACCC) AND THE VICTORIAN MINISTER FOR THE ARTS REGARDING TRUST ACCOUNTS FOR THE GALLERIES

In the early 1990s, the art market was quite depressed, and sales dropped dramatically, with the result that some galleries had to close their doors, owing artists substantial monies. There is a general concern that with the current downturn of the economy, there is a danger of the repeat closure of commercial galleries. In many cases artists will be the ones who will suffer most.

Furthermore, we are constantly aware of certain galleries (and let me stress that these cases are exceptional) who do not pay their artists promptly; in a few cases, legal action had to be taken to recoup the sales proceeds.

There is no legal, moral, or financial justification for galleries using artists' monies as their working capital, without the artist's consent.

The only way in which to ensure that the present gallery system is not used to the disadvantage of artists, is for galleries to operate Trust Accounts for their artists, similar to Solicitors and Estate Agents Trust Accounts.

It is my recommendation that Legislation should be introduced, whereby when a Gallery receives payment for sale of an artist's work, the proceeds will be placed into a Trust Account and payments then made from the Trust Account for the artist's share of the sale, and to the Gallery for their commission.

A number of commercial galleries and the Australian Commercial Galleries Association have opposed this concept, and it is unlikely that the ACGA will self-regulate and set up Trust accounts without some form of Government intervention.

Read the full submission on www.lowensteinsarts.com.au

EXTRACTS FROM TOM LOWENSTEIN'S ARTICLE REGARDING THE FINANCIAL CRISIS AND THE VISUAL ARTS IN AUSTRALIA



THE PRIMARY MARKET

Over the past decade the primary art market has experienced a healthy growth. To date, the impact of the recession on the primary market has been limited and in no sense has this market collapsed. Generally good art by recognized artists has continued to sell well in Melbourne, Sydney, Brisbane, and Canberra. The less well established artists have had some difficulty in achieving sales over say \$10,000, although sales of smaller paintings, works on paper, and graphics have experienced a modest growth.

THE SECONDARY MARKET

It will be interesting to see the first round of auctions in the next few months. In the second half of last year, auction houses had been showing signs of strain. In part, this was due to the lack of high quality stocks to maintain the frequency of more than 30 major art auctions per year.

GENERAL TRENDS

Over the last couple of decades, there has been a marked shift from the "art collector" to the "art investor" / "art speculator". It is without a doubt that auction houses and secondary art market consultants have been instrumental in promoting art as an alternative investment.

This has been to a large extent assisted by the Australian Taxation Office's recognition of art as a legitimate form of investment and its acceptance that even a certain percentage of a superannuation fund can be invested in art (subjects to prudent conditions and guidelines).

It is considered, that the economic downturn will affect the secondary art market to a larger extent than the primary art market. While it is expected that collectors and investors will continue buying good art at reasonable prices, speculators will be reluctant to return to the fray.

Without a doubt, artists, like the general community, will all experience and feel the impact of this financial downturn. However, in most instances, the impact can be managed, and the negative consequences can be minimized.

Continued on pg 4

SUGGESTED STRATEGIES

- 1** It is suggested that artists consult their accountants or financial advisors to put in place contingency plans for, say, next two years. It is suggested these advisors be instructed to prepare a budget for expenditure. In many instances, the difference between anticipated income and budgeted expenditure will create deficiency. We suggest that artists, who do not have reserves to cover this deficiency, but have equity in their property (or some other security), approach their bank to provide a facility to cover this deficiency. We do not suggest that artists actually borrow the money, but that they arrange for their banks to put a facility in place, in case it is needed. In these circumstances (with the exception of the facility fee) interest is only paid on the overdraft.
- 2** Recent observations from exhibitions and reports from galleries and artists suggest that with the exception of some well-established artists, sales in excess of \$10,000 for individual works are becoming more difficult to achieve. However, more sales have been achieved in the lower price bracket. When planning an exhibition, an artist could give a consideration to include a number of smaller items (including works on paper and / or graphics) to complement larger / major pieces.
- 3** It is essential for artists to continue their dialogue and relationship with their commercial art galleries. Artists should avoid the temptation to by-pass their dealers and resort to studio sales. This can have negative consequences and impact the artist's prices for many years in the future.

CONCLUSION

While it may sound like a euphemism, not to view the recession as a crisis, but as an opportunity, this could provide artists with a bit of time to reassess their work and their direction, and to embark on new projects, which could come to fruition when the fiscal situation improves.

Read the full article on www.lowensteinsarts.com.au

MEMBERSHIP BENEFITS UPDATE

The Australian Artists Association is currently updating and re-invigorating its raft of members' benefits, and would like to hear from you about new incentives and ideas. We are keen to emphasise the organisation's role as a spokesperson for individuals, able to assist with legal, moral, and other personal issues arising from your work as a professional artist.

We have recently engaged the arts manager Eugene Barilo von Reisberg, BA Hons, as the administration executive who will oversee the upgrades to the following:

- ☐ A seasonal quarterly members' newsletter;
- ☐ A program of regular social functions in Sydney and Melbourne;
- ☐ A range of special AAA members' discounts on travel, accommodation, art supplies, bookshops, and insurance. Members should note that as an introductory offer, Art Market Report are offering a 50% discount on their annual subscription: \$ 45.00 for 4 issues. For more information please go direct to their website: <http://www.aamr.com.au/newsletter/20090325923/>.

We are keen to hear from our members and value your input into AAA's future direction, so please email us at aaa@lowensteinsarts.com.au and feel free to air your ideas with us!

DO WE HAVE YOUR CORRECT EMAIL ADDRESS?

As from the next issue, we will be sending out our quarterly newsletters by email.

If you prefer to receive our newsletters by regular mail, please contact our office by phone, fax, or email, and we will alter your preferences accordingly.

