

Pacific Standard Time - The Artist's Legacy

September 28, 2011 by Sheppard Mullin

Attention shifts to Los Angeles this Fall, thanks to Pacific Standard Time, a stunning tribute to the Los Angeles post-war art scene. Pacific Standard Time (PST), spearheaded by the Getty Trust, presents simultaneous exhibitions and events at more than 60 Southland cultural institutions. PST provides an ideal opportunity for a closer look at practical business and legal considerations that preserve and shape an artist's legacy.

Artists face unique issues that must be carefully considered and weighed to ensure the continued life of the creative output and to preserve the artistic reputation. Prudently managed business affairs will minimize problems commonly encountered when closing down a studio and during the transition of business affairs from the artist's life to the artist's estate.

First, there is the issue of care for the physical works of art, the critical planning for the inventory, conservation and storage of the artist's works, including considering an archive as a permanent home for papers and other materials. Second is the issue of advantageously placing the artist's works; which works should be preserved, which donated, and when, where, how. This naturally leads to the third issue, prudent sales; how much and what part of the inventory should be released for sale each year and through what means? Is this the moment to re-examine the extant gallery relationship? These decisions require knowledge of the art market, including a sense of timing, market conditions, and museum/collector interest.

Getting the house in order also includes appointing executors, attorneys, and accountants who can be trusted, who know the family or estate, who are familiar with and responsible toward the artist's work, and who have both sensitivity and concern for the future of the artist's works and artistic reputation. Estate planning considerations for an artist are the same as for any individual: to provide for the surviving children, spouse and others according to the law and the artist's wishes so as to assure orderly transition and minimize the potential for probate litigation. For an artist, though, preserving and enhancing an artist's legacy include efficiently managing and planning the estate to maintain continuity and safeguard the assets.

Artists must also consider their intangible assets, which include copyrights, trademarks, licensing potential, and the like. It is important for artists to be aware of whether copyrights and trademarks are registered and/or appropriately titled, if any copyright renewal or termination rights exist, and whether there are any current assignments and licenses of the intellectual property. Artists should also consider licensing decisions to promote accessibility and generate revenue. It is critical to weigh each transaction in terms of its potential for affecting the artist's stature in the art market. Indeed, one should consider the implications of each decision as it promotes and/or dilutes the overall value of the artist's oeuvre.

As we examine the post-war period and its influence on the future, we are reminded that artists' reputations are made by the art world as a whole -- artists, collectors, galleries, the media and art press, museums and other cultural organizations. The artist must identify and express wishes so a comprehensive business and legal framework can be put in place to assure that legacy is preserved in accordance with the artist's wishes.