Understanding, Managing and Planning for Your Physical Art Collection

Session 1: What Are Property Rights in Physical Art? Understanding Ownership, Rights and Valuation

Presented by: Amy Brozenic and Bansari Amin

Collaborative. Accountable. Authentic.
Legal Solutions for Business Objectives.

October 28, 2026

Lathrop GPM

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication are prohibited without express consent from the author.
The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

Agenda

- Physical Ownership vs. Intellectual Property
- What Rights Usually Accompany Ownership?
- What Rights Usually Do Not Transfer?
- Copyright Basics
- When Does Copyright Transfer?
- The Visual Artists Rights Act (“VARA”)
- Considerations for Artwork Valuation
- Artwork Acquisition Checklist
- Key Takeaways
- Questions?

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication are prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

Physical Ownership vs. Intellectual Property

Ownership of the Artwork

The tangible object:

- Painting
- Sculpture
- Photograph
- Mixed-media work

Ownership of Copyright

Separate rights in the creative expression:

- Reproduction
- Distribution
- Licensing
- Derivative works

Example: *An artist sells a painting to a collector. Purchasing artwork generally transfers ownership of the physical object, not the underlying copyright. The artist generally retains copyright unless it is transferred through a signed written agreement or the work qualifies as a work made for hire.*

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication are prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

What Rights Usually Accompany Ownership?

Generally, collectors may:

- ✓ Possess the artwork
- ✓ Display the artwork
- ✓ Sell the artwork
- ✓ Gift or bequeath the artwork
- ✓ Loan the artwork to museums, galleries, or exhibitions

These rights relate to the physical artwork itself.

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication are prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

What Rights Usually Do Not Transfer?

Unless expressly transferred in writing, collectors generally do not acquire:

- X Copyright ownership
- X Reproduction rights
- X Rights to make prints or copies
- X Rights to create derivative works
- X Commercial licensing rights

Example: *A collector may own an original painting but cannot automatically sell posters, prints, or merchandise featuring the image.*

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication are prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

Copyright Basics

What Is Copyright? Copyright generally arises automatically when an original work of authorship is created and fixed in a tangible medium of expression, including paintings, photographs, sculptures, and other artistic works. Although registration is not required for copyright ownership, it provides significant enforcement benefits.

Copyright owners generally have the exclusive rights to:

- Reproduce the work
- Prepare derivative works
- Distribute copies to the public by sale or other transfer, rental, or lease
- Publicly display or perform the work
- Authorize others to exercise any of these rights through licenses or other agreements (in whole or in part)

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication are prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

When Does Copyright Transfer?

- **Copyright ownership may be transferred through**:
  - Written assignment
  - Will or trust
  - Intestate succession
  - Certain mergers, acquisitions, or other operation-of-law transfers
- Exclusive licenses convey specific exclusive rights but do not necessarily transfer ownership. Non-exclusive licenses permit specified uses without transferring ownership.
- Assignments and licenses may be limited by specific rights, duration, territory, medium, or other contractual restrictions.
- **Collectors should:**
  - Confirm which rights, if any, were acquired.
  - Verify the chain of title for any transferred rights.
  - Retain and maintain purchase, transfer, and provenance records documenting the artwork's ownership history for collection management and estate planning.

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication are prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

The Visual Artists Rights Act ("VARA")

- VARA grants **moral rights** to visual artists, separate from standard intellectual property protections. These rights generally remain with the artist even if ownership of the physical artwork or copyright is transferred.
- Protected Works of Visual Art:
  - Single copies or limited editions of paintings, drawings, prints, sculptures, and certain exhibition photographs.
  - Limited editions must consist of 200 copies or fewer and be signed and consecutively numbered by the artist.
- Core Rights
  - **Right of Attribution**
    - Claim authorship of the artwork
    - Prevent false attribution and disclaim authorship of works not created by the artist or materially modified without authorization
  - **Right of Integrity**
    - Prevent intentional distortion, mutilation, or other modification of a work that harms the artist's reputation
    - Prevent the intentional or grossly negligent destruction of a work of recognized stature

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication are prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

The Visual Artists Rights Act (“VARA”)

- These rights generally last for the artist’s lifetime (and for joint works, the life of the last surviving artist) and may not be sold or transferred.
- An artist can, however, expressly waive their rights under VARA through a signed written waiver that identifies the specific work and the uses of that work to be waived.
- Exclusions
  - Works made for hire, including works created within the scope of employment or qualifying commissioned works subject to a valid work made for hire agreement.
  - Categories of works such as audiovisual works, books, magazines, posters, maps, charts, digital publications, and certain applied art.
  - Ordinary aging caused by the passage of time, inherent material deterioration, and certain conservation or preservation activities.
- Collectors should assess potential VARA implications before restoring, conserving, relocating, altering, or destroying artwork. Removal or relocation can create risk when it causes actionable modification or destruction, particularly for building-integrated artwork.

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication are prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

Considerations for Artwork Valuation

- In most circumstances, appraisals typically value the physical artwork unless intellectual property rights are also included. Appraisals should clearly state whether they value only the physical artwork or also include associated intellectual property rights, licenses, contractual restrictions, or other intangible rights.
- Copyright ownership and VARA rights may affect valuation by influencing marketability, permitted uses, associated costs, and potential legal risks. Transferred copyright and licensing rights may have significant economic value where opportunities exist for reproduction, publication, merchandising, or digital commercialization of physical artwork.
- Unclear ownership, missing agreements, or provenance issues may reduce value by creating title and enforcement risks and diminishing buyer confidence.
- VARA rights may also increase diligence, preservation, and conservation costs, particularly for murals and other protected visual works. However, attribution and integrity protections may also help preserve authenticity and reputation.
- For tax, estate, insurance, or charitable-contribution purposes, collectors should engage a qualified appraiser and coordinate with legal and tax advisers.

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication are prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

Artwork Acquisition Checklist

Before purchasing artwork, consider:

- ❑ Who owns the artwork?
- ❑ Who owns the copyright?
- ❑ Has any copyright interest been assigned?
- ❑ Are there any authenticity, provenance, or title concerns?
- ❑ Are there restrictions on reproduction or commercial use?
- ❑ Is there documentation memorializing the parties' respective rights?
- ❑ Are there any VARA rights or waiver agreements applicable to the artwork?
- ❑ Are there any ongoing royalty, resale, licensing, or revenue-sharing obligations?
- ❑ Are there any pending disputes, claims, or liens affecting ownership of the artwork?
- ❑ Are there any restrictions on display, loan, exhibition, relocation, restoration, or modification of the artwork?

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication are prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

Key Takeaways

- Ownership of a physical artwork does not automatically include its copyright or reproduction, licensing, and other exploitation rights.
- Copyright generally remains with the artist unless transferred pursuant to a signed written agreement; a license may permit limited uses without transferring ownership.
- VARA provides artists with ongoing moral rights, so collectors should assess them before restoring, conserving, relocating, altering, or destroying a work.
- Collectors should retain provenance records, purchase agreements, licenses, and assignments, and should clearly document both physical ownership and, where applicable, any intellectual property rights.
- Before reproducing, publishing, licensing, displaying commercially, or materially modifying artwork, confirm the applicable rights and restrictions.

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication are prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

Q&A

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

Contact us

Bansari Amin
469.983.6036
bansari.amin@lathropgpm.com

Amy Brozenic
913.451.5103
amy.brozenic@lathropgpm.com

For more information about our Intellectual Property group, visit: https://www.lathropgpm.com

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author.
The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.