

***THE FINE ART OF GIFTING:  
THE ROLE OF APPRAISERS AND  
APPRAISALS IN NON-CASH  
CHARITABLE CONTRIBUTIONS***

03 May 2019

Planned Giving Round Table of Arizona

25<sup>th</sup> Annual Planned Giving Conference



Allison Gee Fine Art Appraisals



## Overview

I. Brief introduction to art market

II. Qualified Appraiser

III. Qualified Appraisal

IV. Contemporaneous Written Acknowledgment

V. Related Use and Recapture

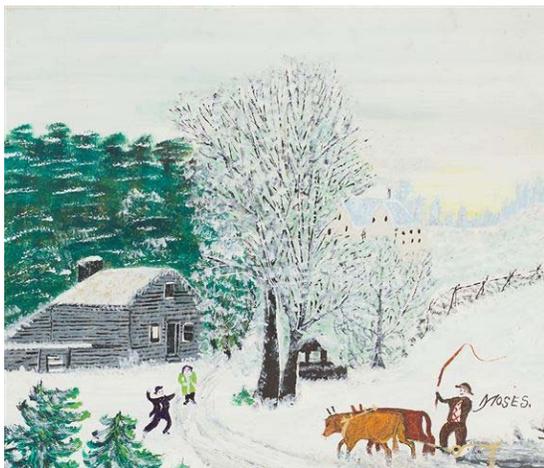


*"How much more would this be worth if something happened to you?"*





Jean-Michel Basquiat. *Untitled*.  
Acrylic, spray paint and oil stick on canvas,  
1982.  
Sold \$110,487,500.00  
Sotheby's, New York, May 2017

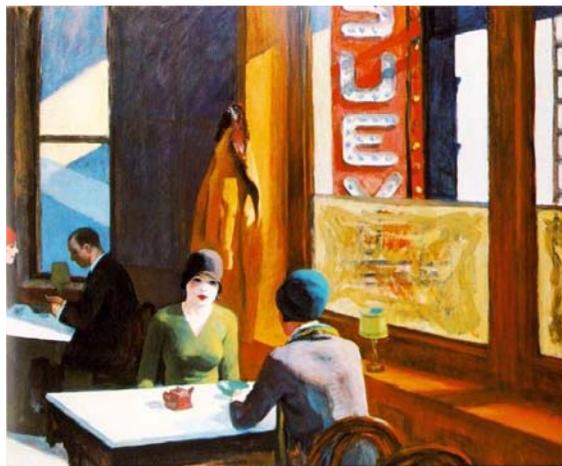


Grandma Moses. *Here Comes Dady*. Oil and glitter  
on board, 1950.  
Sold \$18,000.00  
Larsen Art Auction, Scottsdale, October 2018





Albert Bierstadt. *Sunset-Salt Lake*.  
Oil on board.  
Sold \$315,900.00  
Scottsdale Art Auction, April 2019



Edward Hopper. *Chop Suey*.  
Oil on canvas, 1929.  
Sold \$91,875,000.00  
Christie's, New York, November 2018.



Regulations of 30 July 2018  
implement changes from  
Pension Protection Act of 2006

Any non-cash charitable  
contribution made after 01  
January 2019 must conform to  
the new regs



*Why do people donate?*

- An immediate income tax deduction of the full fair market value of the artwork on the date of donation
- Avoidance of the tax on capital gains on appreciated assets
- An estate and gift tax deduction
- The creation of a lasting legacy with a donor's organization of choice



The 2017 adjusted items (61% were adjusted):

- 94 items: 26% reduction
- 128 items: 35% increase



The 2016 adjusted items (60% were adjusted):

- 131 items: 24% reduction
- 202 items: 36% increase



## *Qualified Appraiser*

- A “Qualified appraiser” means an individual with verifiable education and experience in valuing the type of property for which the appraisal is performed.

(Internal Revenue Code, Section 170, Subparagraph (E) of section 170(f)(11))

- An individual is treated as having education and experience in valuing the type of property if, as of the date the individual signs the appraisal, the individual has:

Successfully completed professional or college-level coursework in valuing the type of property, and has two or more years of experience in valuing the type of property

Or has earned a recognized appraiser designation for the type of property.



Coursework must be obtained from:

- a. professional or college-level educational organization;
- b. generally recognized professional trade or appraiser organization that regularly offers educational programs in valuing the type of property;
- c. an employer as part of an employee apprenticeship or educational program substantially similar to the above.

- A recognized appraiser designation means a designation awarded by a generally recognized professional appraiser organization on the basis of demonstrated competency.

- A Qualified appraiser must perform an appraisal based on generally accepted appraisal standards.



• A Qualified appraiser is NOT any one of the following:

1. An individual who receives a fee based to any extent on the appraised value of the property;
2. Donor of the property;
3. A party to the transaction in which the donor acquired the property being appraised, unless the property is donated within two months of the date of acquisition and its appraised value does not exceed its acquisition price;
4. Donee of the property;
5. Any individual related to the foregoing persons;
6. Any individual employed by the foregoing persons;
7. Any individual married to the foregoing persons;

8. An independent contractor who is regularly used by any of the foregoing persons, and who does not perform a majority of his or her appraisals for others during the taxable year; and

9. An individual who is prohibited from practicing before the IRS under 31 U.S.C. 330(c) at any time during the three-year period ending on the date of the appraisal.

### *Qualified Appraisal*

- A “Qualified appraisal” is prepared by a “qualified appraiser” in accordance with generally accepted appraisal standards. (Internal Revenue Code, section 170 A-17, section 170(f)(11) and §1.170A-16(d)(1)(ii) and e(1)(ii))
- “Generally accepted appraisal standards” are in line with the substance and principles of the *Uniform Standards of Professional Appraisal Practice* (“USPAP”), as developed by the Appraisal Standards Board of the Appraisal Foundation.

Description for someone not generally familiar with the type of property to ascertain the property appraised was the property contributed;

Description of physical condition of the property;

Valuation effective date;

Fair market value as of the effective date;

Terms of any agreements or understanding entered into (or expected to be entered into) by donor or donee relating to use, sale, or other disposition;

Name, address, and Tax I.D. number of qualified appraiser;



Qualifications of the qualified appraiser, including the background, experience, education and any membership in professional appraisal associations;

If the appraiser is acting as a partner of a partnership, employee of any person, or independent contractor engaged by a person other than the donor, then the name address, and Tax I.D. number of such partnership/person;

Statement that appraisal was prepared for income tax purposes;

Statement of the method of valuation used (e.g., income approach);

The basis for valuation (e.g., specific comparables, statistical sampling, etc.).

The appraisal fee cannot be based to any extent on the appraised value.



The appraisal must be received by the donor before due date of the return (including extension) on which a deduction is first claimed.

If the appraisal is of a partial interest in property, the appraisal must be of such partial interest.

Not qualified if the donor either failed to disclose, or misrepresented facts, and a reasonable person would expect that to cause the appraiser to misstate the value.

Must obtain a separate qualified appraisal for each item of property for which appraisal is required.



*Mandatory language:*

“Because of my education and experience, I am qualified to make appraisals of the type of properties being valued in this appraisal report.”



- Specify education and experience in valuing the type of property

- Must be verifiable

§ 1.170A-17(b)(4)



The appraisal was Prepared for  
Income Tax Purposes Intended  
Use: A Non-Cash Charitable  
Contribution.



**“I understand that my appraisal will be used in connection with a return or claim for refund. I also understand that, if there is a substantial or gross valuation misstatement of the value of the properties claimed on the return or claim for refund that is based on my appraisal, I may be subject to a penalty under 6695A of the Internal Revenue Code, as well as other applicable penalties. I affirm that I have not been at any time in the three-year period ending on the date of the appraisal barred from presenting evidence or testimony before the Department of the Treasury or the Internal Revenue Service pursuant to 31 U.S.C. 330 (c).”**



*Benefits to hiring an  
Accredited Appraiser:*

**Murphy vs Commissioner**

Tom G. Murphy, Petitioner-appellant, v. Commissioner Internal Revenue, Respondent-appellee, 8 F.3d 28 (9th Cir. 1993)

Using an appraiser with a designation from a recognized appraisal organization has avoided the negligence penalty as it establishes that Taxpayer reasonably tried to hire a qualified appraiser and did not try to commit fraud



*Contemporaneous Written  
Acknowledgment*

- Not the appraiser's responsibility
- Donee should send
- Contemporaneous Written Acknowledgment to confirm that the charity provided "no goods or services" in exchange for contribution for gifts valued at \$250 or more

The CWA must be prepared in a timely fashion and given to the Donor for their records

- Burden on the Donor to obtain a CWA before the Donor files tax return

If the Donee pays for the appraisal, that amount reduces the Donor's deduction

### ***Best Practice***

**“When accepting gifts, and where required by law or regulation, the museum must stipulate that the responsibility for securing (and paying for) appraisals and furnishing this information to the appropriate government authorities rest with the donor.”**

VAMD Comments, Pg 8, number 18  
<https://aa.md.org/sites/default/files/document/2011ProfessionalPracticesinArtMuseums.pdf>



### ***Ordinary Income Property***

- Owned for one year or less
- Held as inventory by an art dealer
- Donated by the artist
- Donated by a Donor who received it as a gift from the artist
- Gifted to a charity for an unrelated use



### *Unrelated Use*

“a use unrelated to the exempt purpose or function of the charitable organization. For a governmental unit, it means the use of the contributed property for other than exclusively public purposes.”

(IRS Publication 526)



“If a painting contributed to an educational institution is used by that organization for educational purposes by being placed in the library for display and study by art students, the use is not an unrelated use. But if the painting is sold and the proceeds are used by the organization for educational purposes, the use is an unrelated use.”

(IRS Publication 526)



Donor's deduction is limited to the cost basis or the fair market value, whichever is lower.

8282 form required to be sent by Donee if Donee sells, trades or otherwise disposes of the property after the year it was contributed but within 3 years of the contribution.



When it is decided that the donation is not for related use, the deduction is "*recaptured*" by the government.



*Selected forms and guidance materials:*

Form 1098-C Contribution of motor vehicles, boats and airplanes

Form 1040 Income tax form

Form 8282 Donee Information Return



Form 8283 Non-cash charitable contributions

Publication 526 Charitable contributions

Publication 561 Determining the value of donated property



Publication 551 Basis of assets

IRS Code Section 170(f)(8):  
Internal Revenue Code:  
Charitable Contributions and  
Gifts

26 CFR 601.201:  
Code of Federal Regulations  
(Rulings & determination  
letters)



The Appraisal Foundation  
[www.appraisalfoundation.org](http://www.appraisalfoundation.org)

American Society of Appraisers  
[www.appraisers.org](http://www.appraisers.org)

International Society of  
Appraisers  
[www.isa-appraisers.org](http://www.isa-appraisers.org)

Appraisers Association of  
America  
[www.appraisersassociation.org](http://www.appraisersassociation.org)



Allison D. Gee, M.A.  
ASA, ISA

623.535.0631

allisongee.com

[allisongee@msn.com](mailto:allisongee@msn.com)



Accredited Senior Appraiser  
Fine Art  
American Society of Appraisers

Accredited Member  
Fine Art  
International Society of Appraisers



*Thank you!*

This presentation is not, in any way, intended to provide legal, tax or financial advice, nor should it be construed as legal, tax or financial advice.

