

# Artists Beware

When all is said and done, and when our civilization as we know it crumbles, who will be remembered? The politicians, the tycoons, the socialites? None of them. Our civilization, as with earlier cultures, will be known primarily by its artists, authors, musicians, and its architects.

Art and artists are the cornerstones of our culture, for good and for bad. One of the most fascinating artists working in the 1950s and continuing through the early 1990s was Sam Francis, a maverick colorist who had studios in Paris, Bonn, New York, Los Angeles, Palo Alto, and Tokyo during his lifetime.

Francis was born on June 25, 1923, in San Mateo, California. His father was a professor of mathematics and his mother was a concert pianist. The artistic focus of his parents was the guiding passion in his long life. He loved fine books, music, good wine, philosophy, art and, most of all, beautiful, exotic women.

Sam Francis was well educated; he had earned bachelor and master of arts degrees from the University of California at Berkeley. In the late 1960s, he received an honorary PhD from Berkeley. He was a world-famous artist who was celebrated wherever he went. His art was shown in all of the great museums and galleries in London, Paris, Berlin, Madrid, Tokyo, New York, Chicago, and Los Angeles. His works are part of the permanent collection of more than 85 museums worldwide.

Francis's art was published in numerous books, pamphlets, magazines, catalogs, and monographs. In the early 1980s he founded the

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Litho Shop with master printers George Page and Jacob Samuel to print his etchings and lithographs, and Lapis Press with Jan Butterfield and Jack Stauffacher to publish books on the visual arts, poetry, psychology, literature, philosophy, and limited editions of artist books. Both the Litho Shop and Lapis Press are still producing works of art.

Sam collected homes, horses, wine, art of other artists, and wives. Since 1950, he had the strength and fortitude to marry five talented and exquisite women, all of whom were involved in the arts, and produce four children. Two of his wives were Japanese, two were American, and his widow is of English descent.

Sam lived an honored, exciting, and interesting life, and he enjoyed every minute of his existence. He was highly organized in his work and usually disorganized in his personal life. He accumulated wealth and many possessions, but he failed to adequately provide for his heirs on his demise. In 1990, he was diagnosed with prostate cancer and sought alternative medical treatments in Mexico. His cancer progressed rapidly, and on November 4, 1994, he died from complications arising from the cancer.

During the final four years of his life, Sam struggled to paint and made numerous attempts to develop a proper set of legal documents to protect his art and provide for his widow and children, but he never completed that crucial task. As a result, his documents testamentary were inadequate to protect anyone except the IRS.

Following the death of Sam Francis in late 1994, his will and trust were admitted to probate in the Superior Court of Los Angeles County, and an executor was approved by the Court to administer the estate. When the heirs of Sam Francis read the contents of the will and trust, the widow and four of his children filed separate actions to contest it, asking that the document be voided by reason of fraud and duress. When the contesting parties appeared in court, there were more than 10 lawyers representing all of the diverse views and each of the contestants. One of Sam's children filed a separate action against the widow for the wrongful death of her father, blaming the widow for nonfeasance.

More than three years of nasty litigation followed, during which time the Court removed the executor from office and appointed a new

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administrator. Millions of dollars in legal fees were spent, and finally the new administrator negotiated a global settlement of all claims against the estate. The Settlement Agreement gave the widow her community property rights in the estate, together with a widow's allowance, and all the children were treated equally financially. Each heir was entitled to choose five paintings from Sam Francis's works. The balance of the estate, mainly the bulk of Sam Francis's art, was given to the Sam Francis Foundation for charitable uses.

The failure of Sam Francis or his counsel to provide for adequate tax planning and the fair distribution of his vast number of works of art cost the estate millions of dollars in estate taxes and legal fees, which otherwise could have been given to his tax-exempt foundation.

In general, professional artists are totally consumed with their work and tend to avoid making decisions to protect the future of their art, and so neglect their loved ones. The completed work of an artist at his or her death is valued for estate tax purposes at the appraised value of the work. A prolific artist like Sam Francis would have accumulated in his studio at the time of death many thousands of works, which would be appraised at an astronomical number. If the artist has not taken the time during his or her busy schedule to hire competent tax experts to prepare documents testamentary, the bulk of the estate will go to Uncle Sam. Unfortunately, the United States tax laws do not permit death taxes to be paid in art, as does the French government—thus the Picasso Museum, the Miro Museum, the Monet Museum, and many others. Too many famous American artists die without proper estate planning, and as a result, litigation usually ensues. The estates of Mark Rothko, Robert Motherwell, Andy Warhol, and Sam Francis are but a few examples.

Artists are urged to seek expert tax advice early in their careers before they accumulate a large inventory. It is important that consideration be given to the form of a tax-exempt foundation, which would exist during the entire career of the artist. The foundation would be the recipient of yearly gifts from the artist, as well as bequests from the artist's estate after death.

The organization of the foundation is central to its well-being and survival. Trustees named should be well known to the artist, business

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wise, and have good reputations. Close friends, spouses, and other relatives are often chosen, and generally well represent the artist. Historically, the artist's attorney and accountant are the most frequently named trustees, but they do not always represent the best interests of their clients. Choose carefully!

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