

Valuing Artistic Legacy

JOANNE LAWS REPORTS ON IVARO'S ARTISTS' ESTATES CONFERENCE.

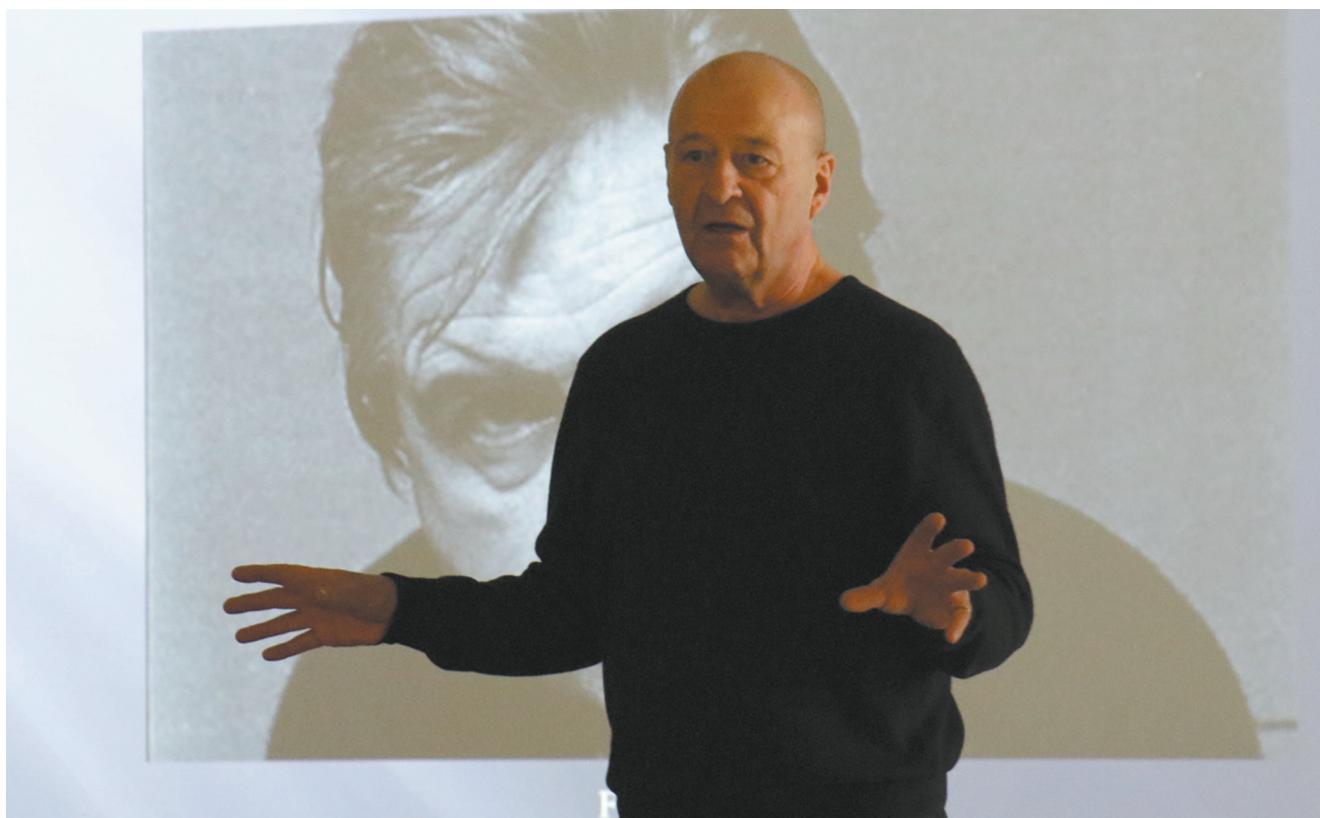
A CONFERENCE ON MANAGING artists' estates was held at the Royal Hibernian Academy (RHA), Dublin, on 23 November 2017. The event was organised by the Irish Visual Artists Rights Organisation (IVARO) – Ireland's copyright collecting society for visual artists. In his opening address, RHA Director, Patrick Murphy, suggested that the Irish visual arts community urgently needs clarity regarding the legislation surrounding artists' estates. In the last year alone, five RHA members have passed away, raising pertinent questions about preserving artistic legacies. Murphy welcomed the prospect of professional guidance across a range of topics relating to artists' estates. Reiterating the timeliness of the event, conference chair, Clíodhna Ní Anluain, introduced the first speaker, Henry Lydiate – an international art lawyer and consultant who has worked with high-profile artists to put systems in place “before the trouble starts”, often before the art is even made.

Lydiate delivered a vibrant keynote presentation to a diverse audience, comprising artists, relatives of artists, archivists, representatives of cultural institutions, trustees and administrators of artists' estates. He commenced by outlining the tangled scenario of Francis Bacon's estate. According to Lydiate, Bacon was against any form of planning or documentation and was “scared to death of signing anything”. When Bacon died, two executors were appointed: Bacon's artist friend Brian Clarke and his long-time dealer, Marlborough Fine Art. Having the gallery as executor was a huge conflict of interest and they were eventually removed, leaving Clarke the task of singlehandedly managing Bacon's estate and identifying where his work had gone. While Bacon did not care about posterity, many other artists do. Lydiate directed the question to living artists: “Do you care about what happens to your art after you die?” If so, preparations should start with planning an archive, assembling a categorised inventory of work and leaving recorded instructions about your wishes. According to Lydiate, estate planning can be viewed as an artist's “last and potentially enduring creative act”. However, the inheritance of an artists' estate can frequently leave serious problems for families, regarding legal, financial, administrative, commercial and artistic implications.

In terms of planning an artistic estate, it is best to establish a legal entity and to appoint carefully selected executors or trustees – not family or friends, who may not have the necessary skills. However, it is common to have a family representative on the board. Galleries can help in numerous ways, by storing or preserving artworks, providing this is outlined in a contract. It is possible to divide an artistic estate into portions, with different provisions being made for different assets. Tangible assets include: immovable (e.g. real estate); moveable (e.g. tools and equipment); and artworks. Living artists should consider whether artworks are finished or unfinished, for sale or not for sale, as it is difficult for families to make these decisions afterwards. Intangible assets include: intellectual property rights; sale of unique or limited-edition objects; copyright (valid until 70 years after the artist's death); resale rights; and patents (e.g. Yves Klein's ‘International Klein Blue’). In addition, one needs to consider the duration of the estate. The romantic-sounding “sunset estates” do not go on “in perpetuity”; they have a fixed-term. Possible exit strategies include donating an estate to an institution, library or museum. Lydiate emphasised that managing artists' estates should not be driven by law; rather, law should be used as a tool to help create a legacy and manage it efficiently.

According to gallery director and advisor to art collectors, Oliver Sears, the art market is over 5000 years old. Yet for approximately 4800 years, artworks were simply commissioned under an artisan model. It wasn't until eighteenth-century Dutch artists began painting landscapes themselves, that there was a proliferation of independent artists. Today, there are an incredible number of artists making work. When they die, their remaining artworks need to be managed. Sears cited Matisse's estate – inscrutably managed by his secretary, who had vast knowledge of his work, but never made money out of it – as the perfect scenario.

Robert Ballagh has worked as a professional artist for over 50 years and has been associated with a number of artists' campaigns. In 1980, he set up the Association of Artists in Ireland, meeting with civil servants to campaign for better conditions for artists, tax exemption, the introduction of the Per Cent for Art scheme and Artists' Resale Rights. Ballagh will leave his archive to the National Irish Visual Arts Library (NIVAL) for prosperi-



Henry Lydiate at the Artists' Estates Conference, Royal Hibernian Academy, 23 November 2017

ty, comprising documentation pertaining to various commissions. During the panel discussion, Patrick Murphy suggested that the Irish arts community is perhaps “on the cusp of gaining sophistication” in “beginning to value [its] heritage”. Lydiate commented that, in recent years, there has been a huge shift within the arts ecosystem, driven by digital technology. Gallerists are “shifting away from bricks and mortar galleries and reaching out to a global audience with jpegs”, while younger artists are embracing digital technology to authenticate their work, using alternative storage systems such as Blockchain to secrete information within artworks themselves, in a process akin to DNA.

Several legal professionals offered pragmatic insights into financial and legal frameworks. Business consultant Gaby Smyth works with the high-profile estates of Irish poet Seamus Heaney and Welsh sculptor Barry Flanagan. He outlined best-practice guidelines for establishing an artist's estate: (i) Get detailed and unambiguous instructions from the artist while they are alive; (ii) Get agreement or consensus from the family, where possible; (iii) Seek professional legal advice. Professional conflicts of interest should be avoided from the outset. Smyth outlined how Brian Flanagan had two years to “get his affairs in order”, after being diagnosed with motor neuron disease. Flanagan wanted his estate to function as a commercial trading entity and made provisions for how the stakeholders would be paid. He left instructions for sculptures to be cast posthumously until editions are complete, effectively creating a “living archive”, rather than just a body of work to be managed. When moulds are beyond repair, manufacturing and trading ceases – offering a good example of an “in perpetuity estate”. At that stage, they will liquidate into a trust, gifting the collection to a public institution. Activities of the estate to date include: compiling a Catalogue Raisonné; working with Flanagan's gallery to digitise his archive; sponsoring PhD research; and building a collection.

Chartered accountant and tax consultant Donal Bradley spoke about succession planning and inheritance tax – also known as Capital Acquisitions Tax (CAT). Offering advice on minimising CAT, Bradley suggested that inheritance could be “paid in instalments”, rather than as a lump sum. Up to €3000 can be paid tax-free each year, to multiple children or grandchildren. Bradley suggested it would be shrewd for artists to carefully structure their gifts, property and assets before death, to avoid passing on a significant inheritance tax. In addition, taking out a life insurance policy might potentially cover any inheritance tax due. Frank O'Reilly from the Whitney Moore Law Firm made important distinctions between foundations and limited companies. According to O'Reilly, foundations have charitable objectives and are set up by deeds of trust. Foundations are more expensive to set up and maintain, as there are compliance costs involved, but they are less scrutinised for tax. In contrast, a limited company is an ongoing trading vehicle. It is easy to set up, the rules are

well-established, and the main objective is profit. If the aim is to create or manufacture extra editions or generate a higher profile for the estate, then it is often better to set up a limited company.

Katie Blackwood from NIVAL offered archival perspectives on estate planning. NIVAL preserves supporting documentation from artists' careers, making it available to the public. Affectionately nicknamed “The Stasi” by one NCAD staff member, NIVAL houses a comprehensive collection of published books, journals and catalogues pertaining to Irish art and design, as well as ephemera files, outlining “the backstory of art”, found in printed material such as press releases, invites, exhibition reviews, price lists and small-scale catalogues. Documents pertaining to the behind-the-scenes running of various organisations and festivals include: gallery plans, exhibition programmes, financial notebooks, minutes from meetings and visitor books. NIVAL also houses Special Collections – archival material that is purposefully kept together in the original sequence. One such example is a collection bequeathed by Irish critic and art historian Dorothy Walker (1929 – 2002).

Marie McFeely, Images & Licensing Officer at National Gallery of Ireland (NGI), manages the intellectual property relating to the 16,300 artworks in the museum's collection, 25% of which are currently in copyright. According to McFeely, without legitimate rights and clearances, museums cannot fully utilise their collections. The museum has traced the estates of over 300 artists – a process that involves tracking down copyright heirs, mediating on behalf of estates, and developing a copyright database. McFeely outlined the fascinating copyright case of Irish painter, Paul Henry, which proved hugely problematic for the museum. Henry was married twice and died intestate, necessitating a widespread search for the rights-holders. The NGI began by examining the will of his second wife, Mabel. After scouring cemetery and church records, heirs to Henry's estate were finally identified and were shocked to learn that they stood to inherit Henry's copyright royalties. This complex case, which required NGI staff to act as detectives and interpreters of the testate, highlights artists' wills as part of a bigger picture, regarding the preservation of cultural legacies – a sentiment that underpinned the conference as a whole. As stated by Ní Anluain, having these conversations within the visual arts community suggests a “coming of age”. Artists were advised to consult with representative organisations like IVARO who can offer expert guidance.

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