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ARTISTS' ESTATES AND COPYRIGHTS

Werner Stauffacher Copyright protection does not expire with the death of an artist. Rather, it remains in effect for an additional 70 years. Copyrights are generally owned by the person who created a work. Yet these rights can be transferred and bequeathed (Art. 16 Sect. 1 Swiss Copyright Act – Urheberrechtsgesetz, URG). If the artist has not made any prior arrangements, matters are governed by the law of inheritance once he or she has passed away. In principle, the surviving spouse and the direct descendants are the primary legal heirs. When there are no such heirs, the estate goes to the parents of the deceased, and, if they are no longer living, it goes to the artist's siblings. Nevertheless, it is possible for the artist, while still alive, to exercise unfettered discretion in determining the disposition of the artistic estate, whereby the statutory portions otherwise passing to the surviving spouse and the children should be addressed.

"The transfer of mere ownership of an individual work does not carry with it the copyright-related powers to make use of the property, even if the transfer involves the original work", as stated clearly and unambiguously in the statute in Art. 16 Sect. 3 URG. Hence, even when original works are sold or donated to an archive or a foundation, the copyrights remain the property of the heirs of the deceased – unless an express agreement is made to the contrary. To do so, a transfer of the copyright protections would need to be stipulated in the deed to the foundation, in the contract of sale, or in the language granting the bequest. With such transactions, it is essential to review the extent to which the copyrights for the

transferred works have likewise been transferred. It typically makes sense to give foundations rights for their own use, without any claims to a right of compensation flowing to the copyright holder, to facilitate the goal of maintenance and dissemination of the work. Should a foundation be empowered to transfer usage rights for a work to a third party, the grant of such powers can be contractually negotiated to provide that the heirs shall be paid a portion of the thus generated proceeds. Yet such uses by third parties can also be arranged through ProLitteris based on the current image tariff, whereby the collecting society shall apportion the reproduction payments according to its rules of distribution. An issue that absolutely must be settled in contracts is the question of moral rights. It can thus be stipulated that the consent of the heirs would have to be obtained for the use of works in altered form. In addition, the heirs should also be required to give their approval when works are used for advertising purposes. If such uses are approved, agreement should also be reached regarding the amount of money to be paid to the heirs. When artwork belonging to an estate is being sold, the sales price can be fixed at an amount to compensate for all future uses as a currently payable lump sum. There are many (contractual) possibilities and it is important to discuss all aspects of the transaction in detail and have it all recorded in a written agreement.

Natale Sapone

Nur wenige Tage vor seinem Tod schenkte (1921 - 2001) dem Kunstmuseum Thurgau noch eine repräsentative Werkgruppe. Nach der Räumung seines Ateliers wurden seine Werke bei einer Speditionsfirma eingelagert. Die Erben erklärten sich bereit, die Werke einem zu gründenden Verein zu übergeben und als erstes wurde ein geeigneter Lagerraum gesucht. Im Mai dieses Jahres konnten die Werke an den neuen Standort überführt werden. Der Verein Werk Natale Sapone kann sich jetzt auf seine Aufgabe konzentrieren, die rund 600 Werke zu verkaufen und an Institutionen zu verschenken.

Quelques jours seulement avant sa mort, Natale Sapone (1921 - 2001) a fait cadeau d'un groupe d'œuvres représentatif au musée d'art de Thurgovie. Après le déménagement de son atelier, ses œuvres ont été déposées chez une entreprise d'expédition. Les héritiers étaient disposés à donner les œuvres à une future association et l'on a commencé par chercher un local de dépôt approprié. En mai dernier, les œuvres y ont été transférées. L'association Œuvre de Natale Sapone peut à présent se concentrer sur sa tâche qui est de vendre les 600 œuvres ou de les donner à des institutions.

Just a few days before his death, Natale Sapone (1921 - 2001) gave a representative group of works to the Kunstmuseum Thurgau. After clearing his studio, his works were placed in storage with a forwarding company. The heirs agreed to consign the works to an association that was to be formed and began to look for an appropriate storage facility. In May of this year, the works were transferred to a new location. The association Œuvre of Natale Sapone is now able to concentrate on the task of selling the some 600 works or donating them to institutions.