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Ways to avoid sleepless nights and legal problems about conflict of interests

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Do any of you involved with appraising also buy and sell the very same things you appraise? If so, are you like me in that you go to sleep at night often wondering if this obvious conflict of interest will lead to inaccurate appraising or appraisals tainted with the prejudice of your motive to buy the item later? Or how about the legal problems you could run into if you by creating an appraisal tainted with prejudice.

You are not alone. There is at least one other person who also has lost sleep at night- me!

Many fine arts and antique dealers, as well as others in the appraising business also buy and sell the kinds of items or in fact the very items that they also appraise. Sometimes this is construed by others as less than honest, but I believe that a professional appraisal done by someone active in the buying and selling business in some respects be better than if done by someone who "pledges to have no interest in buying and selling", and I believe those of us who buy and sell what we appraise are arguably in the position of giving better or more accurate appraisals than those who do not.

Obviously there is the possibility of a conflict of interest if as a fine arts dealer one would take in an item for appraisal while all the time having an interest or potential financial gain in the trade of that item. Ever since I did my first appraisal, I had to pause and scratch my head wondering if I should appraise this in writing knowing that the customer might later want to sell the item to me. It would almost seem that no matter how you appraise something the situation could later come back and bite you if you later buy and sell the item.

As for myself, I admit that as time went on I answered these questions one instance at a time. It took a while but a eventually came to the conclusion that in fact those who actively buy and sell such items are possibly the best qualified to also appraise them.

Over the years I have given some thought to this conundrum and below are some thoughts that may help assuage our consciences as well as avoiding legal problems in a household appraisal situation.

Rule #1: Begin your interview session with an up-front, honest statement about your possible conflict of interest.

Honest and straightforward communication with the client is the best insurance that a misunderstanding about your conflict of interest will not lead to an unhappy experience. Therefore, tell the client about your possible conflict of interest: "I'd like to appraise your items here today but before I do you should know that someone else might rightly accuse me of a possible conflict of interest. In other words, I make most of my income by buying and selling just the kind of items you

want me to appraise, and it may be that someday you might want me to buy your items from the evaluation I am giving you. I would not want to think that my appraisal was tainted or prejudged to the extent you could be caused to lose money in the transaction." You can then go on to tell how that could mean that you might be prejudged to buying or consigning their items and that your interests may be enhanced by giving a low appraisal. Usually the response I get from the client after this speech is positive. They respect my candidness, and often take the initiative to give the "go ahead" for the job anyway.

Rule #2: Remind your clients that being active working with objects like theirs is to their advantage. Do not be shy about reminding your potential client that because you are actively in the business of buying and selling the very things they need appraised, you are probably best qualified to give accurate information about the value nuances, condition, and rarity of these items. Those who only appraise may look up what the marketplace paid for items similar to the item sold for last year in references. They may see only photos of the comparison object, and are left to speculate on details regarding its condition. Finally, they combine the available information with their professional experience to arrive at an appraised value.

On the other hand you have worked with items similar to the one in question every day. You handle it. You watch as prospective buyers may buy it or reject it for some given reason. You have sat through the public auctions and have interpreted buyers moods which published reports cannot give. As for myself, many things I appraise I am also familiar with, but when available I also check published sale results.

Finally, the field of fine arts values is very fluid and fickle. Values change as the wind blows; yet there is no one more attuned to these subtle changes than someone who actively works in the buying and selling activities every day.

Rule #3: Write these things in a disclaimer at the beginning of the report.

Many times I have read the appraisals of others with the disclaimer "I pledge that I have no interest in the buying or selling of the any of the items appraise herein." If you feel there may be a conflict of interest with your appraisal why not create a boilerplate disclaimer of your own: "I have personally examined the items in this appraisal, and many items are similar to those I handle every day in my business where I buy and sell antiques and fine arts. Although I may have a future interest in buying and selling these items in the future, I feel especially well qualified to comment on the nuances of values of these items in the marketplace today and have done so to the best of my ability and without prejudice." This statement combined with a short "bio", or biographical information telling of your qualifications as an appraiser, makes an honest, informative introduction to an appraisal and should instill confidence in your client.

In addition to a biographical write up and "pledge" a further boilerplate statement can remind the reader that your appraisal reflects your opinions and beliefs and whatever forensic tests were or were not made may support your findings. Along this line it would be good to consult an attorney or your appraisal organization before composing these documents to precede the appraisal.

Rule #4: Never write an appraisal for something you sell.

If your are selling fine arts or antiques never write what amounts to an appraisal stating the condition and/or value without at least a strong disclaimer stating that the report is your opinion and subject to error. Better still, just don't write any statement that can be construed an appraisal in the first place. My belief is that such a "report" or "appraisal" would never stand scrutiny anyway, since you are the

person who sold it and an appraisal calls for an arm's length opinion. I made this mistake once, and I will probably never make it again. We sold an expensive antique clock to someone out of state. After receiving payment I voluntarily wrote a "report" that was essentially an appraisal, a couple of pages long stating both the age of the clock and details about its condition such as replaced parts and restorations. While being shipped the clock was damaged. The customer called his local antique dealer friend, a competitor, who, it turns out, was also good at stirring up trouble, who inspected the damaged clock and proclaimed it was a "reproduction, made 20 years ago!" My report stated it was an 18th century clock, and even though it was, we would not allow us to the clock and found it very difficult or impossible to prove that his charges were incorrect or fraudulent. This resulted in a costly lawsuit which could have been avoided if I had not taken it upon myself to write the report in the first place.

Rule #5: Explain the differences in values.

Take time to explain the difference in three appraisal values (that we work with): "replacement value," "fair market value" and "estate value". Later they will understand easily why the value on their insurance policy are not the amounts they would realize if they went to sell their items to you or anyone else. This activity helps avoid later misunderstandings.

In summary, do what my dentist does. As I lay on my back helpless and unable to talk she resorts to thoughtful monologue: "The next thing I see is a possible cavity- that's the bad news; but- well look here- I do see that you have been flossing. That's good, although there's still a need for cleaning those teeth every night!" She knows there's always a need for keeping the customer engaged and report what's happening, even if she or he cannot answer. I think that kind of attention to communication with the client before, during, and after the appraisal services is the best way to end with a clear conscience about misunderstandings of conflict of interest. Then go out and see your attorney about writing boilerplate disclaimers, attaching them to all your appraisals.

These are my ways to avoid sleepless nights and legal problems about conflict of interests, what are yours?

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