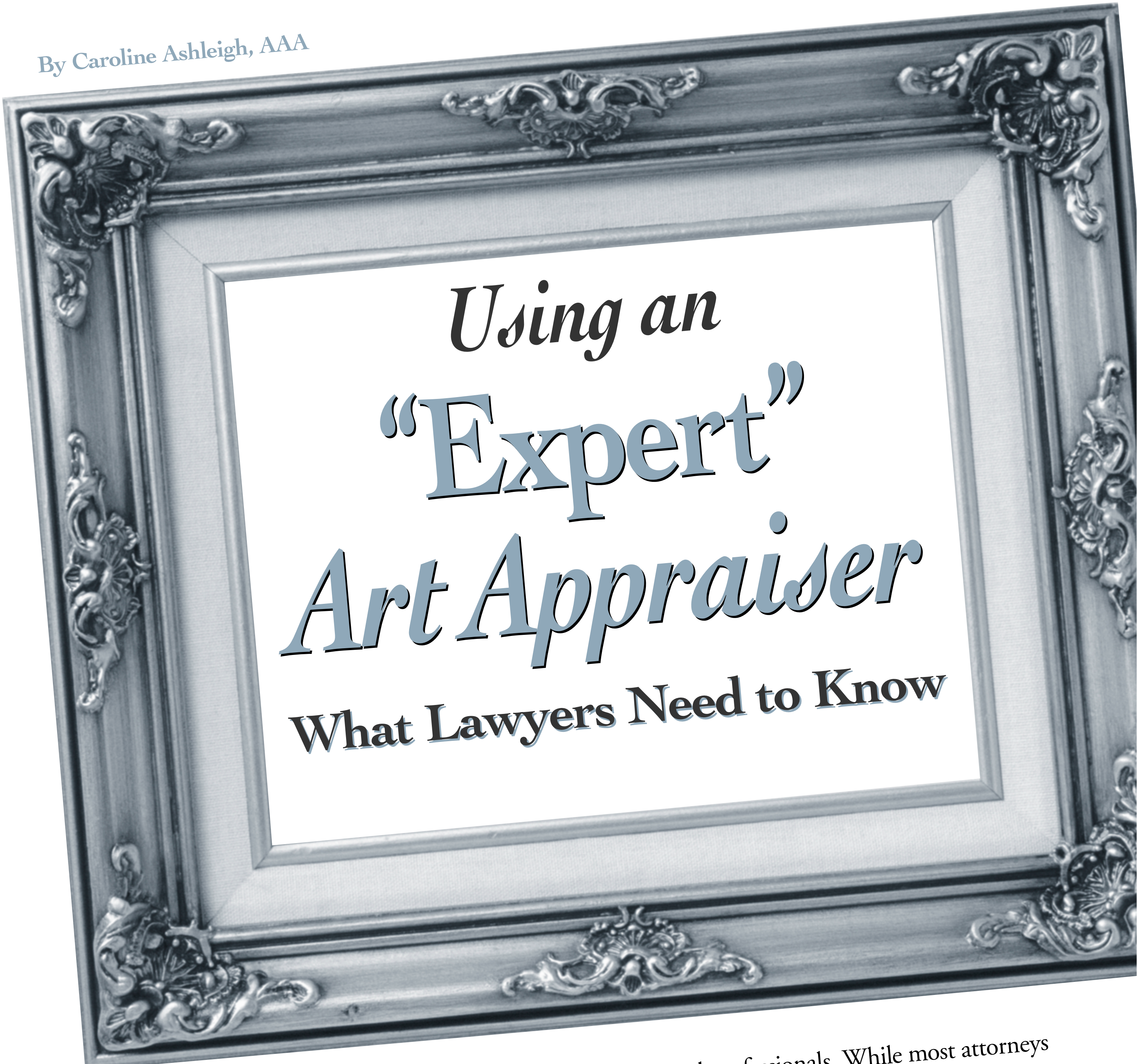
By Caroline Ashleigh, AAA



Using an "Expert" Art Appraiser

What Lawyers Need to Know

Appraising is a complicated field practiced by trained professionals. While most attorneys and judges are familiar with the legal issues involving an appraisal, they may not know what goes into a professionally prepared appraisal commissioned for their clients, especially if the appraisal is challenged in a court proceeding or by the IRS. Therefore, it is important for all attorneys to know exactly what to look for in an appraisal, and in so doing to be able to evaluate the competence of the appraiser who has written it.

An appraisal is more than just a declaration of value. It is a coherent presentation of all the factors that have played a part in helping the appraiser synthesize the market data in order to arrive at an appropriate valuation. These factors include the purpose of the appraisal, for example, insurance, donation, inheritance or divorce, the condition of the object, and market comparables. Unless an appraisal conforms to these methodological standards, and includes a clear statement of all the necessary valuation facts, it may not hold up in court, despite the stated expertise of the appraiser or his or her professed "years of experience" in dealing with the art market.

Personal property appraisers belong to what is euphemistically known as a "self-regulated" profession. Federal laws that do exist provide little help; therefore the first issue confronting an attorney or a judge is how to evaluate the appraiser.

Evaluating the Appraiser

The following are questions that should be asked to evaluate an appraiser:

1) Are you a member of a professional personal property appraisers association?

2) Are you a certified appraiser of personal property?

3) Have you ever had any training in appraisal theory, principles, or methodology?

4) Are you familiar with the Appraisal Foundation's Uniform Standards of Professional Appraisal Practice? Have you passed the USPAP test?

The next issue with which you will be confronted is how to evaluate an appraisal.

Evaluating the Appraisal

The following checklist, providing elements of a correctly prepared appraisal, is intended to assist attorneys in the complicated job of evaluating appraisals:

1) Purpose of the appraisal: All appraisals should clearly state the purpose for which they are written, such as insurance, donation to a charitable institution, inheritance tax, or equitable distribution. Valuation varies according to purpose.

2) Type of valuation: Generally for insurance purposes, "replacement value" is the amount of money one would expect to spend at a retail store to replace a lost or stolen object. This represents the high end or retail end of the valuation spectrum. But for IRS purposes, for donation or inheritance taxes, and for liquidation, expect to apply a valuation based on "fair market value," defined by the IRS as "the price that property would sell for on the open market." It is the price agreed upon between a willing buyer and a willing seller, with neither party required to act, and both having reasonable knowledge of the relevant facts. Generally, this is lower than replacement value.

3) Comparable sales: This can prove to be the element most vulnerable to legal challenge in an appraisal. A "complete" appraisal report should include not only a list of comparable sales used, but also a narrative rationale, written by the appraiser.

4) Statement of professional qualifications of the appraiser: A résumé or curriculum vitae of the appraiser should give any impartial observer an indication of the appraiser's qualifications.

5) Statement of physical inspection of object or method used in determining value: In general, the appraiser should physically inspect all objects valued. Frequently, however, it is only possible for the appraiser to see a photograph.

6) Thorough description of appraised objects: All objects should be described as completely as possible in the appraisal, including measurements, weights, condition, etc.

7) Provenance, if available: An object that formerly belonged to a prominent collector will certainly have more value than a similar one without an illustrious past.

8) Exhibition and publication history, if any: Publication by a noted scholar or representation in a major museum exhibition will generally make an object more valuable.

9) Statement of the appraiser's belief in the object's authenticity: Contrary to popular perception, appraisers are not "authenticators." They can, however, be expected to apply due diligence in establishing an object's authenticity.

10) Statement of fee structure: Appraisers generally charge by the hour, day, or piece. The IRS will disqualify appraisals in which the fee is based on a percentage of the appraised value.

11) Statement of "disinterest" on the part of the appraiser: IRS guidelines are very specific in stressing that an appraiser should have had no commercial interest in the object appraised.

12) Firm statement of value: Appraisals are not estimates with a range of valuation. They should present a single figure for valuation conclusion—for example, $10,000, instead of $8,000 to $12,000.

13) Date and signature of appraiser: These elements are essential if the appraisal is to serve as a legal document.

Unless the appraiser's résumé contains certain credentials listed in this article and the appraisal contains the previously explained elements, the appraiser and/or the appraisal may not hold up in court or by the IRS, despite the years of experience professed by the appraiser. All attorneys are advised to ask and verify the credentials of the appraiser and request a sample appraisal report. Recommendations from the professional society and organizations that require on-going education, testing, and adherence to generally accepted technical and ethical standards will go far in insuring that the appraiser and the appraisal are never successfully challenged. ✦

Caroline Ashleigh, AAA, is founder of Caroline Ashleigh Associates, Inc., a Birmingham, Michigan firm that provides art and antique appraisal and consultation services. Ms. Ashleigh is a Certified Member, Mentor and Midwest Regional Representative of the Appraisers Association of America and an appraiser for the Emmy-nominated PBS program "The Antiques Roadshow" since its inception in 1996. She earned a degree in Appraisal Studies in Fine and Decorative Art from New York University. www.appraiseyourart.com.