

Comment,  
WHAT IS THE BOTTOM LINE? VALUING  
ART, ANTIQUES, AND OTHER PERSONAL  
PROPERTY IN A DIVORCE

“Art is the most intense mode of individualism  
that the world has known.”

—Oscar Wilde

The valuation and division of personal property such as a couple’s art collection or antiques are some of the most disputed parts of a divorce proceeding. Aside from the value implication of dividing the marital property, the parties are dealing with emotional attachments to the properties. Courts have observed that valuation is not incidental to the dissolution action, but at its very heart.<sup>1</sup> Furthermore, some experts have stated that valuation of marital assets is one of the most difficult and challenging aspects of divorce litigation.<sup>2</sup> Thus, a savvy attorney can use valuation and the division of personal property as an effective negotiation tool.<sup>3</sup> Because an effective valuation is important, most attorneys will hire an expert appraiser to provide the appropriate report and testimony to the court. “It takes time and money to locate and value property and requires able attorneys, accountants, and appraisers. The key to proper valuation is the ability to pay for these experts.”<sup>4</sup> That being said, the parties’ counsel should still be aware of the methodologies and techniques used by the appraiser to double check the work and to provide effective representation.

In this Comment, I discuss the role that the attorney should take to prepare the client’s assets for an appraiser’s evaluation

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<sup>1</sup> Harriet N. Cohen & Patricia Hennessey, *Valuation of Property in Marital Dissolutions*, 23 FAM. L.Q. 339, 340 (1989) (quoting *Schanback v. Schanback*, 18 FAM. L. REV. 6 (Sup. Ct. 1985)).

<sup>2</sup> James J. Nolletti, *Exploring Decisions and Developments that Impact the Practice Today and Tomorrow*, in STRATEGIES FOR FAMILY LAW IN NEW YORK 1, 6 (2010) available at [http://www.chnnb.com/\\_pdf/strategies-for-family-law-in-new-york.pdf](http://www.chnnb.com/_pdf/strategies-for-family-law-in-new-york.pdf).

<sup>3</sup> CHARLES T. ROSOFF ET AL., VALUATION STRATEGIES DIVORCE § 7.1 (4th ed. 2013).

<sup>4</sup> Cohen, *supra* note 1, at 340.

and the methods and systems used by appraisers in providing valuations. The focus of this Comment will be on the valuation of personal property. Personal property is defined as “identifiable tangible objects that are considered by the general public as being ‘personal,’—for example, furnishings, artwork, antiques, gems and jewelry, collectibles, machinery and equipment; all tangible personal property that is not classified as real estate.”<sup>5</sup> In Section I, I evaluate the steps that a counsel should take to ensure proper valuation is done. In Section II, I will provide a general overview of what standards and methodology those appraisers typically use in providing valuation of personal property. In Section III, I will conclude with the examples of fine art and decorative art to demonstrate specific factors that play into the valuation of those items such as paintings and rugs.

## I. The Lawyer’s Role in Valuation

A lawyer should be diligent in seeking an accurate and detailed appraisal on the behalf of the client. Every aspect of valuation is significant: what property is valued, who does the valuation, the method used, and how the valuation is paid for. These issues, on the surface, are procedural, but in fact, are substantive in effect.<sup>6</sup> According to Thomas W. Crockett and J. Randall Patterson, family law practitioners in this area, competent attorneys must use every means to persuade the court that their client’s contribution to the marriage was substantial and maximize the value of the assets the opponent is expected to take from the marriage, while minimizing the value of the assets that the client is expected to take.<sup>7</sup> However, zealous advocacy can go too far and actually be detrimental to the client, if the appraisal and valuation is not conducted with objective standards. It is unfair to the appraiser and to the client to pressure the expert to provide an opinion within a particular valuation for nego-

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<sup>5</sup> ROSOFF ET AL., *supra* note 3, at § 7.2 (citing Uniform Standards of Professional Appraisal Practice).

<sup>6</sup> Cohen, *supra* note 1, at 340.

<sup>7</sup> Thomas W. Crockett & J. Randall Patterson, *Dividing the Property in a Marital Dissolution*, 62 Miss. L.J. 57, 81 (1992).

tiation purposes.<sup>8</sup> The goal is to engage an independent and reliable expert, not a hired gun.<sup>9</sup>

Appraisal can be used effectively to persuade the court and provide a favorable outcome for a client; however, the proper steps should be taken to justify the valuations submitted to the court. This section details the process that attorneys should use to prepare their client's assets for proper valuation and appraisal. The steps are: (1) understanding the discretion of the court; (2) collecting and cataloging a client's personal property; and (3) finding and retaining a qualified appraiser.

#### A. *Understanding the Court's Discretion in Determining Valuation*

The court has discretion to determine the value of personal property in splitting the marital property; however, the court's decision is contingent on the information provided to it by the parties. Therefore, an attorney should perform the adequate due diligence in preparing the client's assets for valuation and engaging the proper appraiser. In *Miller v. Miller*, an Indiana Court of Appeals case, the court held, "[I]n divorce cases the trial court has not only the power but the statutory duty to adjust and adjudicate the property rights of the parties involved."<sup>10</sup> The court further stated that adjusting property rights of the litigants was not only a mandatory duty of the trial court, but also that the court has broad discretionary power about how to do so.<sup>11</sup>

It is important to remember that valuation is conducted at the trial court level, and once valuation is made and judgment is entered, the valuation is not subject to modification.<sup>12</sup> The judgment cannot be set aside unless an appellate court finds an abuse of discretion.<sup>13</sup> However, there are also limitations that are im-

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<sup>8</sup> Robert E. Kleeman, Jr. & Gerald N. Weaver, *When to Use an Appraiser*, 17 FAM. ADVOC. 20, 21 (Spring 1995).

<sup>9</sup> *Id.*

<sup>10</sup> 256 N.E. 589, 592 (Ind. Ct. App. 1970).

<sup>11</sup> *Miller v. Miller*, 256 N.E. 589, 592 (Ind. Ct. App. 1970).

<sup>12</sup> Cohen, *supra* note 1, at 364.

<sup>13</sup> BARTH H. GOLDBERG, VALUATION OF DIVORCE ASSETS § 1:20 (rev. ed. 2013).

posed upon the trier of fact, which an attorney should analyze and store in his or her trial arsenal.<sup>14</sup>

If an appropriate and properly-backed appraisal is provided to the court, the trial court has a duty to use that information. “If testimonial evidence is presented as to value based upon written appraisals sufficient for the trial court to have affixed property values, it is error for the court not to so do [sic].”<sup>15</sup> The evidence presented to the court is crucial. Frequently, whether the determination of value in divorce proceedings is upheld turns on the evidence used by the trial court in reaching its decisions.<sup>16</sup> For example, in Indiana, a valuation submitted by one side is competent evidence of the value of property in a divorce proceeding and may alone support the trial court’s determination in that regard.<sup>17</sup> In Montana, the court is free to adopt any reasonable valuation (premised on expert testimony, lay testimony, documentary evidence, or any combination of those testimonies) which is supported by the record as long as it is reasonable in light of the evidence submitted.<sup>18</sup> Therefore, while the court has discretion to determine the valuation, the power to do so is not unlimited, and unless the evidence provided by the parties is insufficient, the court must use the information presented to it.

Courts have held that when both parties’ valuations are defective, the court may independently determine valuation.<sup>19</sup> In *Fellerman v. Bradley*, a New Jersey Superior Court case, the court held that the use of court-appointed experts accomplished the state purpose of valuing the parties’ property more efficiently because that expert is not considered a “hired gun,” and thus, there are fewer disputes regarding methodology used and conclusions in the appraisal.<sup>20</sup> That being said, an expert is typically not appointed unless the facts of the case are sufficiently complex.<sup>21</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at § 1:25.

<sup>17</sup> *Id.* (citing *Alexander v. Alexander*, 927 N.E.2d 926 (Ind. Ct. App. 2010)).

<sup>18</sup> GOLDBERG, *supra* note 13, at § 1:25 (citing *In re Marriage of Helzer*, 102 P.3d 1263 (Mont. 2004)).

<sup>19</sup> *Tripp v. Comm’r*, 337 F.2d 432, 434 (7th Cir. 1964); *Goldstein v. Comm’r*, 298 F.2d 562, 567 (9th Cir. 1962).

<sup>20</sup> 465 A.2d 558, 560 (N.J. Super. Ct. Ch. Div. 1983).

<sup>21</sup> *See Haymes v. Haymes*, 649 N.Y.S.2d 698 (N.Y. App. Div. 1990).

### B. *Collecting and Cataloging Client's Personal Property for the Appraiser*

In determining the fair market value of an item, the two most important factors are first, correctly identifying the object; and, second, analyzing the object's condition.<sup>22</sup> Therefore, one of the first steps that the attorney must do in order to prepare the client's assets for valuation is to collect and properly catalog the personal property for the appraiser. Barth H. Goldberg states, "[E]ach attorney . . . has [a] duty in every dissolution proceeding to discover the items of value to be included in the marital pot's valuation to insure that an equitable distribution is achieved."<sup>23</sup> This gives the attorney an idea of magnitude of the estate, the assets involved, and the possible issues that may arise.

The collection and cataloging step should be done as early as possible because it can provide an insight into what type of valuation is necessary, and whether valuation would be so costly that it does not justify the expense. An attorney should ask the client to help inventory the marital estate (both assets and liabilities) and provide some acceptable initial opinion as to value.<sup>24</sup> This can provide avenues to negotiate with the other side and reach a consensus rather than going through the steps of valuing the property and spending a substantial amount of fees on an appraiser. Reaching consensus early is especially important if the client is cost-sensitive.

Whether the attorney and client decide to use the information to settle or hire an appraiser, the cataloging should be done effectively to provide the potential appraiser with the most optimal information. In making a list of the items, it is helpful to use the system that most experts use in the field to allow for easy transfer of information and for streamlining the process. The standardized cataloging used in the trade is called the "Getty Id System," introduced in 1997 as a result of surveying accredited appraisers, museum curators, art dealers, the IRS board of review, and other experts in the field.<sup>25</sup> The system provides a professional minimum standards guideline of elements for

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<sup>22</sup> Vanessa G. Ellermann, *Marital Property: An Attorney's Guide to the Valuation of Art and Antiques*, 11 J. CONTEMP. LEGAL ISSUES 275, 277 (1997).

<sup>23</sup> GOLDBERG, *supra* note 13, at § 14:1.

<sup>24</sup> Kleeman, Jr. & Weaver, *supra* note 8, at 20.

<sup>25</sup> ROSOFF ET AL., *supra* note 3, at § 7.3.

cataloging items, which include: (1) a photograph of the item; (2) type of object; (3) materials and techniques; (4) measurements; (5) inscriptions and markings; (6) distinguishing physical features; (7) title / subject matter; (8) date or period / era; (9) maker or attribution; and (10) short description.<sup>26</sup> Some common items that are collected today include art collections (i.e. paintings, print), baseball player cards, books and bookplates, clocks and watches, coin collections, furniture, guns, jewelry, stamps, and musical instruments.<sup>27</sup> Each item may have unique features that only certain types of appraisers are able to evaluate; therefore, once the items are properly cataloged and labeled, the next step is to find an appropriate appraiser.

### C. *Finding and Retaining a Qualified Appraiser*

A “qualified” appraiser is hard to define because the appraisal profession is not regulated by any government licensing authority.<sup>28</sup> However, there are professional associations that provide certification to people who work in the field. Thus, to ensure that the client’s valuations will survive the toughest scrutiny at trial, it is wise to seek an appraiser that is certified by a well-known association. The associations provide a code of ethics, a system of certification, and recourse to clients who are not satisfied with the work performed by the appraiser, all of which can afford significant safeguards to the client and the attorney when presenting the information to the court.<sup>29</sup> Examples of well-known associations are the American Society of Appraisers, Appraisers Association of America, and International Society of Appraisers.

When an appraiser is reached, there are important questions that both the attorney and the appraiser will have to ask. The attorney should ask specific questions to gauge the appraiser’s expertise. Below are some sample questions the attorney can ask in order to determine the appraiser’s scope of services, qualifications, and possible conflicts of interest:

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<sup>26</sup> *Id.*

<sup>27</sup> GOLDBERG, *supra* note 13, at § 14:1.

<sup>28</sup> ROBERT D. FEDER ET AL., VALUING SPECIFIC ASSETS IN DIVORCE § 25.08 (2011).

<sup>29</sup> *Id.* at § 25.08.

- (1) What are your affiliations?
- (2) Have you had any business or personal dealings with the client or the other side that might interfere with or bias your report?
- (3) What are your fee structures?
- (4) Are you willing to appear and testify in court?<sup>30</sup>

The overarching factor that the attorney must keep in mind is the cost of hiring an appraiser. Appraisers are expensive, and if the cost of the valuation will outweigh the financial benefit of obtaining the asset, the attorney must have alternative strategies in mind to negotiate with the opposing counsel or find alternative opportunities for equitable division. Therefore, an attorney should ask about the fee structure of the appraisal in an initial meeting. The fee structure may be a flat rate or an hourly rate, depending on the appraiser.<sup>31</sup> Ethically, an appraiser is not allowed to base the fee on the value of the property.<sup>32</sup> Another important aspect when determining which appraiser to hire is the appraiser's willingness to testify at the trial. In-person expert testimony (compared to submission of an expert report) may make the application of valuation more persuasive to the court.<sup>33</sup>

Once the attorney decides to retain a certain appraiser, the appraiser will ask some initial questions as well. The appraiser will want to understand the purpose of the appraisal, location and description of the property, the availability of supporting documents, and the timeline required for the appraisal.<sup>34</sup> The attorney must be specific about the type of valuation sought, the intended use, and the intended users; all three are important elements that are required in the appraiser's report.<sup>35</sup> Another question that will arise is whether the appraiser is to be retained by one side or both sides. Joint experts make sense for some personal property, but industry experts advise against joint ap-

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<sup>30</sup> LESLIE LYNCH-CLINTON ET AL., VALUATION STRATEGIES IN DIVORCE § 7.19 (2013).

<sup>31</sup> *Id.*

<sup>32</sup> Feder, *supra* note 28 at 25.08.

<sup>33</sup> Lynn Weddle Judkins, Comment, *The Road to Splitsville: How the Timing of Valuation During Marital Dissolution Leads to Costly Detours*, 15 J. AM. ACAD. MATRIM. LAW. 465, 477 (1998).

<sup>34</sup> FEDER ET AL., *supra* note 28, at § 25.08.

<sup>35</sup> LYNCH-CLINTON ET AL., *supra* note 30, at § 7.22.

praisers for antiques and other unique high-value articles.<sup>36</sup> The next section will discuss the standards and methodology used by appraisers. This quick overview can help attorneys better understand and analyze the result of an appraisal to effectively present that information to the court and argue the superior validity of the valuations.

## II. Standards and Methodology Used in Personal Property Appraisals

While personal property involved in a divorce proceeding can be varied and require different special expertise to evaluate, personal property appraisers, nonetheless, utilize standard valuation methodologies and approaches. Appraisers use both objective methodologies and subjective qualitative comparisons.<sup>37</sup> This section will discuss the standards and the methodologies employed by personal property appraisers. First, the section will explain the professional standards for appraisers as outlined by the Uniform Standards of Professional Appraisal Practice (“USPAP”), issued by the Appraisal Foundation. Second, this section will provide an overview of the specific theories and valuation systems that personal property appraisers utilize and what they must include in their appraisal reports.

### A. Professional Appraisal Standards of the USPAP

The USPAP is the widely accepted standard for appraisal practice and report preparation among appraisal experts.<sup>38</sup> The Appraisal Foundation, founded in 1987, is a not-for-profit educational organization that regularly updates the USPAP to meet new demands on the appraisal profession.<sup>39</sup> The Appraisal Foundation’s website states that it is “authorized by Congress as the source of appraisal standards and appraiser qualifications.”<sup>40</sup> The organization’s Mission Statement states: “The Appraisal Foundation is dedicated to promoting professionalism and ensur-

<sup>36</sup> Robert E. Kleeman, Jr. & Gerald N. Weaver, *supra* note 8, at 21.

<sup>37</sup> FEDER ET AL., *supra* note 28, at § 20A.01.

<sup>38</sup> *Id.* at § 20A.05.

<sup>39</sup> *Id.*

<sup>40</sup> APPRAISAL FOUNDATION, appraisalfoundation.org (last visited Oct. 11, 2013).

ing public trust in the valuation profession. This is accomplished through the promulgation of standards, appraiser qualifications, and guidance regarding valuation methods and techniques.”<sup>41</sup>

As of the writing of this Comment, the USPAP’s latest version is the 2012-2013 standards and the full text can be found online.<sup>42</sup> The USPAP standards are generally accepted for professional appraisal practice in North America.<sup>43</sup> The USPAP has developed standards for all types of appraisal services, including real estate, personal property, business, and mass appraisals.<sup>44</sup> The standards that specifically address personal property are Standards 7 and 8.<sup>45</sup>

The USPAP Handbook states that Standard 7 can be used as a checklist by the appraiser and the users of the appraisal service to address the substantive aspects of developing a credible appraisal of personal property.<sup>46</sup> Standard 7 has six subsections that explain the basic requirements that an appraiser must comply with in developing a personal property appraisal.<sup>47</sup> The general steps outlined in Standard 7 are that the appraiser must: (1) identify the problem to be solved; (2) determine the scope of work necessary to solve the problem; and (3) correctly complete research and analyses necessary to produce a credible appraisal.<sup>48</sup> Of particular importance is Standards Rule 7-2, which lists “the key components of a correctly prepared appraisal, including the identification of the intended use and users as well as the identification of value within the assignment.”<sup>49</sup>

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<sup>41</sup> APPRAISAL FOUNDATION MISSION STATEMENT (Oct. 11, 2013), <http://appraisalfoundation.org>.

<sup>42</sup> See UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (Oct. 11, 2013), <http://uspap.org>.

<sup>43</sup> USPAP, APPRAISAL FOUNDATION (Sept. 22, 2013), <http://appraisal.foundation.org>.

<sup>44</sup> *Id.*

<sup>45</sup> See UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE, *supra* note 44.

<sup>46</sup> *Standard 7*, UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (Oct. 11, 2013), <http://uspap.org/#/78/zoomed>.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> FEDER ET AL., *supra* note 28, at § 20A.05; see also *Standard 7*, UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE, *supra* note 44 .

Standard 8 outlines how appraisers should communicate their analysis for the ultimate user of the report and explains what should be included in the report, whether it is written or oral.<sup>50</sup> It enumerates the proper way of recording the appraisal process, including record keeping and document preparation.<sup>51</sup> Standards Rule 8-2 states that written appraisals must be prepared in one of three styles: (1) Self-Contained Appraisal; (2) Summary Appraisal Report; or (3) Restricted Use Appraisal Report.<sup>52</sup> According to the comments following Rule 8-2, a Self-Contained Appraisal Report or a Summary Appraisal Report must be provided if the intended user includes parties other than the client.<sup>53</sup> When the intended user is only the client, a Restricted Use Appraisal Report may be provided.<sup>54</sup> The appraiser and the attorney can refer to the subsections of Standards Rule 8-2 to see the specific requirements for each type of report, depending on the purpose and the objective of the appraisal.

Compliance with the USPAP standards is very important, and courts will invalidate an appraisal if the report does not comport with the standards. In *Scull v. Commissioner*, the parties provided separate appraisals of the couple's fine art collection, and neither appraisal was based on analyses in conformity with USPAP.<sup>55</sup> "Since the valuations were not made in conformity with logical and understandable valuation methodologies, the court did not find either party's valuations, experts, or expert reports to be convincing."<sup>56</sup> The court may adopt some portions of the expert testimony, but reject other portions based on persuasiveness and helpfulness.<sup>57</sup> Therefore, an appropriately-prepared appraisal is critical in reaching the client's goals and objectives for the asset distribution during the divorce proceeding.

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<sup>50</sup> See *Standard 8*, UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (Oct. 11, 2013), <http://uspap.org/#/83/zoomed>.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id. at Standard 8-2 cmt.*

<sup>54</sup> *Id.*

<sup>55</sup> T.C.M. (RIA) 1994-21.

<sup>56</sup> ROSOFF ET AL., *supra* note 3, at § 7.31.

<sup>57</sup> *Helvering v. Nat'l Grocery Co.*, 304 U.S. 282 (1938).

## B. Methodology and Appraisal Reports of Personal Property Appraisers

To understand the methodology used by appraisers, one must keep in mind the appraiser's main objective. An appraiser's primary objective is to establish and describe the relevant kind of value to be used in the appraisal report.<sup>58</sup> The exact system of valuation that is used is up to the appraiser. The three main approaches to valuing personal property are (1) the cost approach; (2) the income approach; and (3) the market comparison approach.<sup>59</sup> Here is how each approach is defined:

**Cost Approach:** The research and analysis of the cost of a substitute property with equivalent function and desirability, providing an estimate of the depreciated reproduction, reproduction new or replacement cost new of the property.<sup>60</sup>

**Income Approach:** The research and analysis of the present worth of anticipated income.<sup>61</sup>

**Market Comparison Approach:** The research and analysis comparing sales of property similar enough to the property being appraised to permit detailed comparison and estimating value by comparison with properties sold in the relevant market.<sup>62</sup>

In personal property appraisals, the cost approach and market comparison approach are the most commonly used systems. The income approach is mostly applicable to income producing properties.<sup>63</sup> Unless the item to be analyzed has rental market or income potential, the income approach is not the most effective system of appraisal. The cost approach is a great way to begin a value analysis for personal property because it determines the minimum amount people would be willing to pay to replace an item of equal desirability or utility. However, the cost approach should not be used alone in personal property appraisals because many times the personal property being evaluated is too unique to provide an easily traceable "substitute" as envisioned by the

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<sup>58</sup> Babette Cohen, *Trash or Treasure: Valuing Personal Property – Art, Antiques, Jewelry, and Collectibles*, 17 FAM. ADVOC. 34, 34 (Spring 1995).

<sup>59</sup> AMERICAN SOCIETY OF APPRAISERS, *THE APPRAISAL OF PERSONAL PROPERTY* 19 (Patricia C. Soucy & Janella N. Smyth eds., 1994).

<sup>60</sup> LYNCH-CLINTON ET AL., *supra* note 30, at § 7.23.

<sup>61</sup> *Id.*

<sup>62</sup> FEDER ET AL., *supra* note 28, at § 20A.03 (providing definitions for all three approaches).

<sup>63</sup> AMERICAN SOCIETY OF APPRAISERS, *supra* note 61, at 19.

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cost approach.<sup>64</sup> Therefore, personal property appraisers rely mainly on the market comparison approach, with a specific emphasis on fair market value indicators.

The market comparison approach requires research of various markets. Various markets that are analyzed include auction venues (i.e. international houses, local auction houses, and country auctions), retail galleries, private dealers, wholesale dealers, and liquidators.<sup>65</sup> The appraiser must indicate which market was used in the analysis and indicate why that particular market was used. Specifically in regards to a fair market value investigation, the appraiser must (1) determine the condition of the piece; (2) assess whether overall the artwork is desirable compared to other paintings by the same artist (which is a subjective decision); and (3) objectively research the appropriate market for the buying and selling of the piece.<sup>66</sup> In *Wendlandt v. Wendlandt*, a Texas Court of Civil Appeals case, during the divorce proceedings the husband used an expert to show that the fair market value of the personal property was based on the liquidated worth of the property at a distress sale (forced sale auction), which resulted in a very low valuation price.<sup>67</sup> The appellate court affirmed the decision of the lower court to exclude the expert testimony, holding that the value obtained in a distress sale is not a proper measure for fair market or actual value.<sup>68</sup> The husband's attorney faced this issue because the client wanted to deemphasize the value of the personal property, instead of employing objective criteria in valuation as outlined in the market comparison approach.

Tax courts have recognized that an appropriate retail market for artwork is auction markets, which are distinguished from a forced-sale auction.<sup>69</sup> "The fair market value of an item of property is measured by what would be paid for the item, not on the

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<sup>64</sup> See SANDRA TROPPER ET AL., VALUATION STRATEGIES IN DIVORCE § 7.28 (2013) (sample appraisal language provided that states, "The cost approach . . . [is] inapplicable to this appraisal assignment because the properties cannot be duplicated and retain their values").

<sup>65</sup> LYNCH-CLINTON ET AL., *supra* note 30, at § 7.23.

<sup>66</sup> FEDER ET AL., *supra* note 28, at § 20A.01.

<sup>67</sup> 596 S.W.2d 323 (Tex. Civ. App. 1980).

<sup>68</sup> *Wendlandt v. Wendlandt*, 596 S.W.2d 323 (Tex. Civ. App. 1980).

<sup>69</sup> See *Estate of Smith v. Comm'r*, 57 T.C. 650, 658 (1972).

net amount received by the seller.”<sup>70</sup> The exact system used to value the property is not as crucial as providing clear and substantive justification for using a particular methodology.

### III. Appraisal of Specific Types of Personal Property: Fine Art and Decorative Art

Depending on the collection of the client, an attorney may need to employ only one general personal property appraiser or separate specialist appraisers. Depending on the novelty of the item, individual items may require special attention. Therefore, the cataloging and identifying of the items are of particular importance in understanding the scope of the appraisal, and for the benefit of the client, the projected cost of that appraisal. This section provides a brief insight into two particular categories of personal property that are seen often in divorce proceedings.

#### A. Fine Art

Fine art is a “catch-all phrase” that includes various media such as painting, printmaking, photography, and sculpture.<sup>71</sup> The factors that should be taken into consideration when valuing fine art include: the maker, subject matter, condition, and provenance.<sup>72</sup> When evaluating paintings in particular, the key terms and points of analysis for appraisers include: acrylic paint, item size, frame size, oil paint, and tempera paint.<sup>73</sup> Because this category is vast and can include a variety of details that are unique to the individual pieces of art, personal property appraisers usually have specialties and are expert in valuing certain types of art items.<sup>74</sup> Therefore, the attorney should advise the client regarding the ability to find and employ a specialist appraiser depending on the property that needs to be evaluated.<sup>75</sup>

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<sup>70</sup> *Id.* at 659.

<sup>71</sup> ROSOFF ET AL., *supra* note 3, at § 7.5.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at § 7.6.

<sup>74</sup> FEDER ET AL., *supra* note 27, at § 26.01.

<sup>75</sup> Three main appraiser-accreditation organizations provide an online directory of personal property appraisers: The American Society of Appraisers ([www.appraisers.org](http://www.appraisers.org)), The Appraisers Association of America ([www.appraiserassoc.org](http://www.appraiserassoc.org)), and The International Society of Appraisers ([www.isa-appraisers.org](http://www.isa-appraisers.org)).

### B. *Decorative Art*

Another frequently seen category in matrimonial proceedings is decorative art. Decorative art refers to various “minor” arts, including furniture, art glass, silver, and porcelains.<sup>76</sup> “Many items which could be considered decorative art could also be labeled ‘collectibles’ depending on the popularity of the items at a specific point of time, as well as the quality of the execution and the prestige of the maker.”<sup>77</sup> Two of the most common types of decorative art in divorce proceedings are furniture and rugs.

Antique furniture usually provides for a high fair market value. However, contemporary furniture can also provide substantial value in its own right. “The fair market value of important pieces of contemporary design can be a multiple of the fair market value of an analogous piece of antique furniture of poor craftsmanship or in poor condition.”<sup>78</sup> Thus, proper identification and valuation of furniture is crucial to the equitable division of property in a divorce. Of particular importance, the appraiser of furniture must consider not only the aesthetics of the furniture, but also the utility.<sup>79</sup> It is important to note as well whether restoration would be required. The cost of restoration might be significant, and thus, should be calculated into the valuation. The appraiser should be notified regarding previous restoration efforts because the repairs may decrease or even increase the value of the piece.

In regards to rugs, a generalist personal property appraiser might be qualified to appraise the item; however, many times a specialist might be required.<sup>80</sup> When determining the value of rugs, the appraiser will take into consideration: (1) the region in which the rug was made; (2) the media of the piece (e.g., cotton, wool, silk, etc.); (3) whether or not it was hand woven/sewn or machine-made; (4) condition; and (5) age.<sup>81</sup> The condition of the rug can vary due to the amount of use because rugs are typically used for functional purposes, rather than mostly for decoration. The professional associations of appraisers should be consulted

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<sup>76</sup> ROSOFF ET AL., *supra* note 3, at § 7.10.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at § 7.11.

<sup>79</sup> *See id.*

<sup>80</sup> *Id.* at § 7.14.

<sup>81</sup> *Id.*

to find appraisers that specialize in the type of property that the client needs valued, especially if the item is unique.<sup>82</sup>

#### **IV. Conclusion**

The trial court has full discretion to determine the value of personal property; however, it is required to rely on the information provided by the parties in the case. Therefore, proper appraisal and valuation of personal property is critical to laying the groundwork for an optimal outcome for the client. The attorney should be diligent in collecting and cataloging the client's estate and preparing the items for the professional appraisal. Finding and retaining a qualified appraiser can take time, especially if the client's estate has a unique collection of personal property. Once an appraiser is retained, an attorney must ensure that the appraiser is abiding by the USPAP standards of conduct for appraisers and that the appraiser is employing appropriate and effective methodological systems of valuation. Overall, an appraisal can determine the strategy of an attorney in arguing for marital property division; therefore, appraisals should be developed meticulously and effectively for the ultimate benefit of the client.

Najmeh Mahmoudjafari

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<sup>82</sup> See websites cited *supra* note 75.

