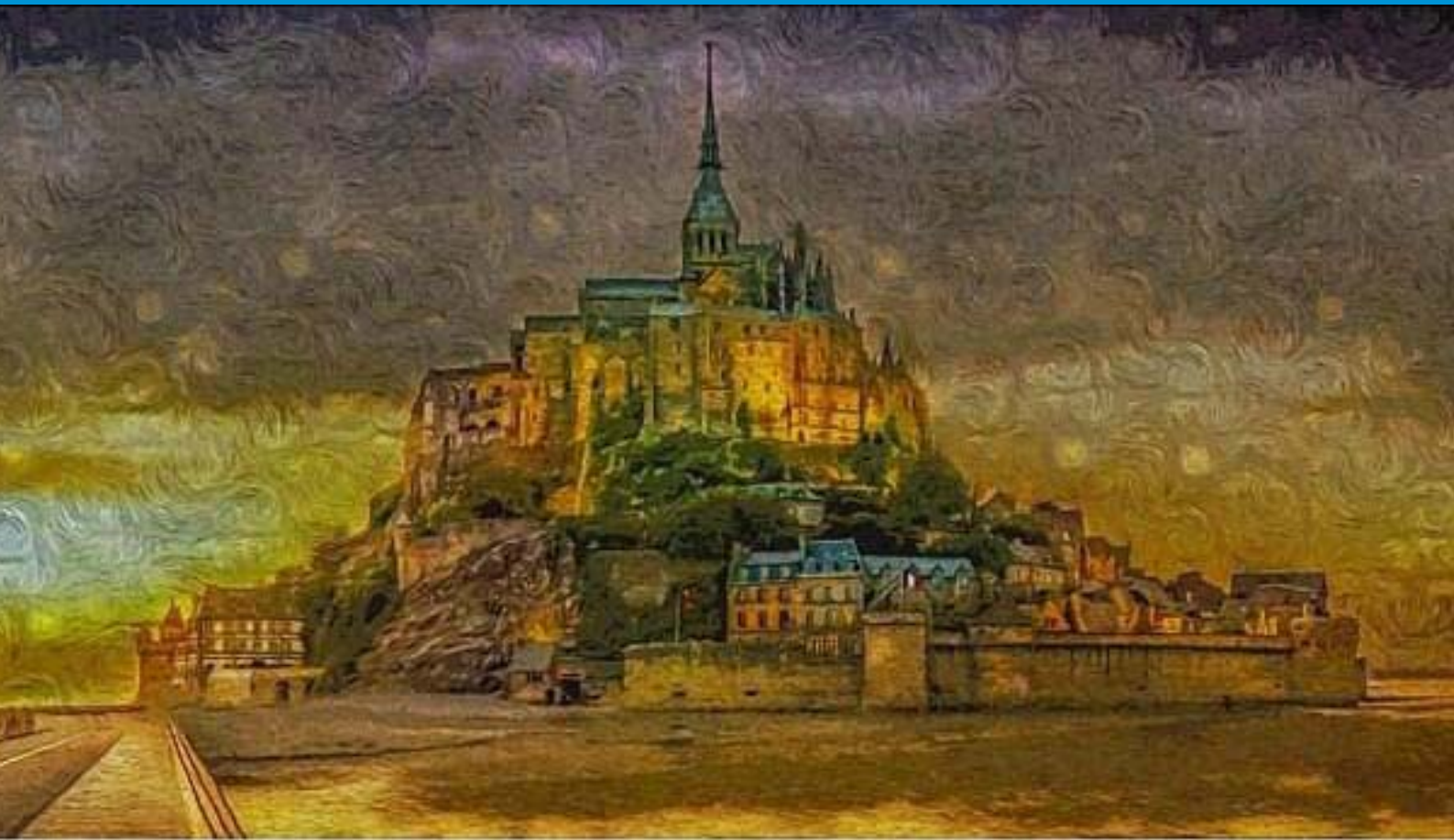


Tips for borrowing and lending against art



Valuable artworks are often used as security for loans, with the same issues recurring repeatedly on financing transactions. Fieldfisher art finance experts Hannah Rowbotham and Sebastian Crawford offer some tips for borrowers and lenders.

As an asset class, art has generally performed well over the last two decades. In 2019, the global art market was estimated to be worth US\$64 billion.

Increasingly, international private banks offer art loans and there are a number of specialist lenders and auction houses that have operated in this field for many years.

As a firm that has been advising on art loans for 30 years – in particular, acting for international investment banks and specialist lenders – we see many of the same issues come up repeatedly.

Below, we have set out a number of practical but often overlooked points we regularly address in any art loan.

Tips for borrowing and lending against art



Provenance is key

- It is vital that a lender establishes the provenance of the artwork (i.e., the history of ownership from its date of creation). A valuer will look at contemporary descriptions, inventories of collections, inventory numbers on the painting itself and auction sale catalogues to check whether a work is authentic.
- It is also important to check that all the paperwork proffered as evidencing provenance is genuine and that any required export licences have been obtained. For example, if you are provided with a letter or certificate purporting to be from the world's leading expert or committee in respect of a particular artist, check that it really has been written by that expert or committee in relation to that particular work.
- Ensure there are no unexplained gaps in the ownership history of the artwork. This is especially true for the period 1933 to 1945, where there could be potential for a holocaust restitution claim.

Existing encumbrances

- It is necessary to check the artwork is free from mortgages, charges and any other third party claims. There are various searches that can be made in the UK. These include:
 - The Art Loss Register (which will also search for holocaust restitution claims); and
 - (in the case of artwork owned by individuals in the UK) the Register of Bills of Sale at the High Court.
- If the individual has actual possession of the artwork in the UK and you have a clear Bill of Sale search and Art Loss Register search, you can be reasonably certain that your borrower has not granted security over it.

Tips for borrowing and lending against art

Loans to individuals

- A loan to an individual secured on works of art may well constitute a regulated credit agreement and be subject to the UK consumer credit regulations, leading to an increase in paperwork and potential to challenge if the necessary steps, including completion of an Ultra High Net Worth Declaration by the individual, are not met.
- Loans to individuals also create tricky, but not insurmountable, issues where the lender wants to take security over the artwork if it is held on the walls of that individual's house. The archaic Bills of Sales Acts are inflexible and for this reason most lenders prefer to take security over artwork held by corporate entities or established trusts, and only take a pledge over art owned by an individual where the art is held in a gallery or storage.

Security considerations

- Generally in the UK, the type of security over art is dictated by the nature of the owner. If it is a corporate, you would normally take a chattel mortgage (although you could take an equitable charge or pledge); in the case of an individual, you would normally take a pledge. If a pledge is taken, possession must pass to a third party and held to the order of the lender, or to the lender itself.
- A key issue is whether the art is stored by or on behalf of the lender, or left in the possession of the borrower. For both legal and obvious practical reasons, a lender requiring watertight security over a work of art should be circumspect about leaving it in the borrower's possession or control. A lender may be open to a work being exhibited in a museum during the period of the loan with prescribed conditions.

- Where art has been loaned or leased within the same corporate structure or to the ultimate beneficial owner (UBO), these documents should be reviewed. The rights under these documents should be assigned to the lender and specific attornment/bailment agreements must be put in place so that the person (natural or corporate) holds the artwork to the order of the lender. This advice also holds true where the art is stored with a third party custodian – the lender will need to obtain the same assurances from that custodian.
- In an enforcement scenario, realisation of the security will require appropriate advice on the best method of disposal and may involve issues such as whether or not the art can be moved to another jurisdiction and securing the art during transit to achieve the best price.
- Finally, note that the Goods Mortgages Bill was introduced to Parliament in 2017 to permit an individual to create security over artwork held by that individual without having to register in the form prescribed under the Bills of Sales Acts. However, the Bill slipped down the agenda in the 2021 Parliament and it has now been confirmed this Bill will make no further progress.

Loan to value ratio

- Most lenders will use an external valuer to determine the value of a work and their internal processes to determine the ceiling value they will lend on that work or collection of works. A well-advised borrower will produce supporting documentation about the work(s) in the form of further valuations, as this might assist it in securing a loan of the amount sought.
- Firms such as Overstone have developed specialist software and processes to help determine the appropriate loan to value ration and monitor that value over the duration of the loan, as values will fluctuate.



If you have any queries about lending or borrowing against art, please contact Fieldfisher's specialist art financing team.

This article was written by Hannah Rowbotham, a partner in the banking and asset financing team, and Sebastian Crawford, finance associate, at Fieldfisher.



Hannah Rowbotham

Partner, Banking & Finance

+44 (0)330 460 6453

hannah.rowbotham@fieldfisher.com



Sebastian Crawford

Associate, Banking & Finance

+44 (0)330 460 6468

sebastian.crawford@fieldfisher.com