

Selected Issues Involving Art and Collectibles

Dallas Bar Association
Probate Trusts and Estates Section

November 26, 2013

Presented By
Norman A. Lofgren
Looper, Reed & McGraw, P.C.

Mark Prendergast & Karl Chiao
Heritage Auctions



According to the IRS:

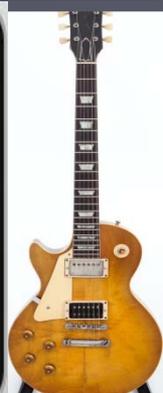
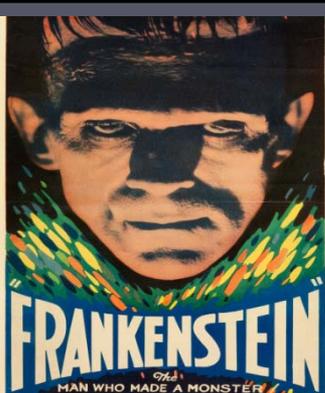
“art” includes “paintings, sculptures, watercolors, prints, drawings, ceramics, antiques, decorative arts, textiles, carpets, silver, rare manuscripts, historical memorabilia, and other similar objects”

According to the Internal Revenue Code:

Revenue Code:

“Collectibles” mean:

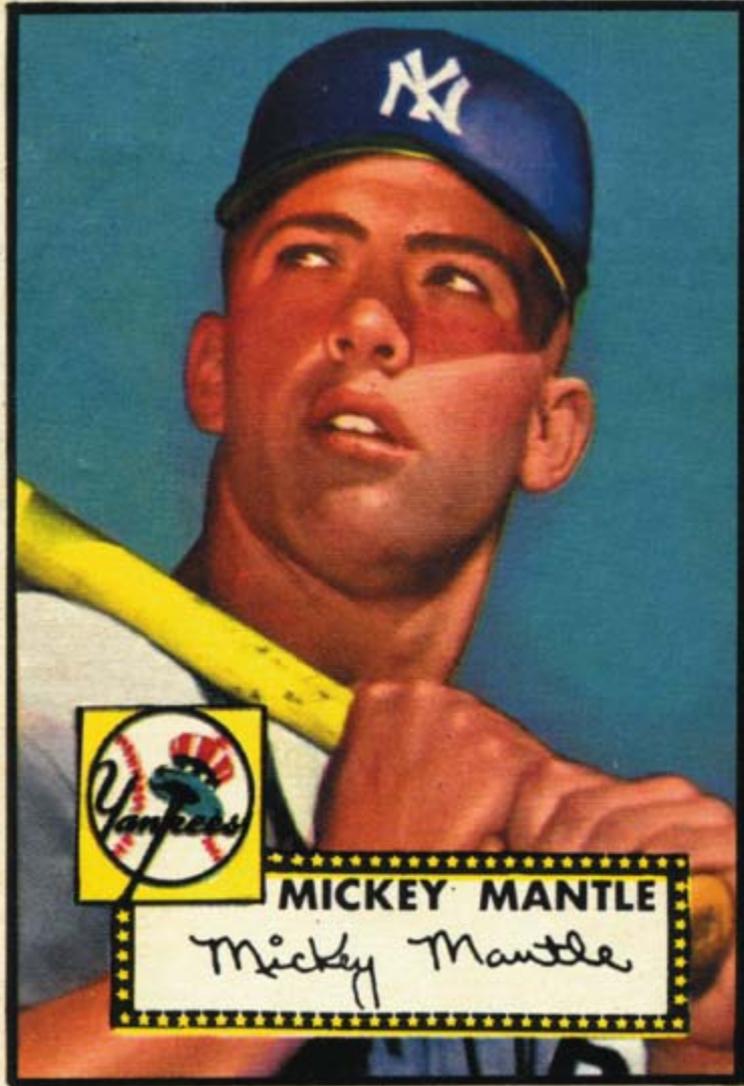
- a. any work of art,
- b. any rug or antique,
- c. any metal or gem,
- d. any stamp or coin,
- e. any alcoholic beverage or
- f. any other tangible personal property specified by the Secretary



JUNK or TREASURE?







MICKEY MANTLE

Mickey Mantle

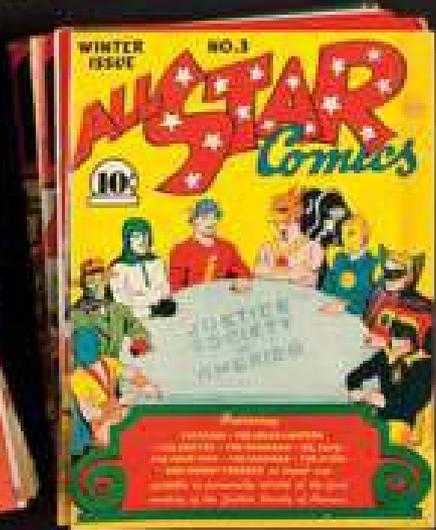




















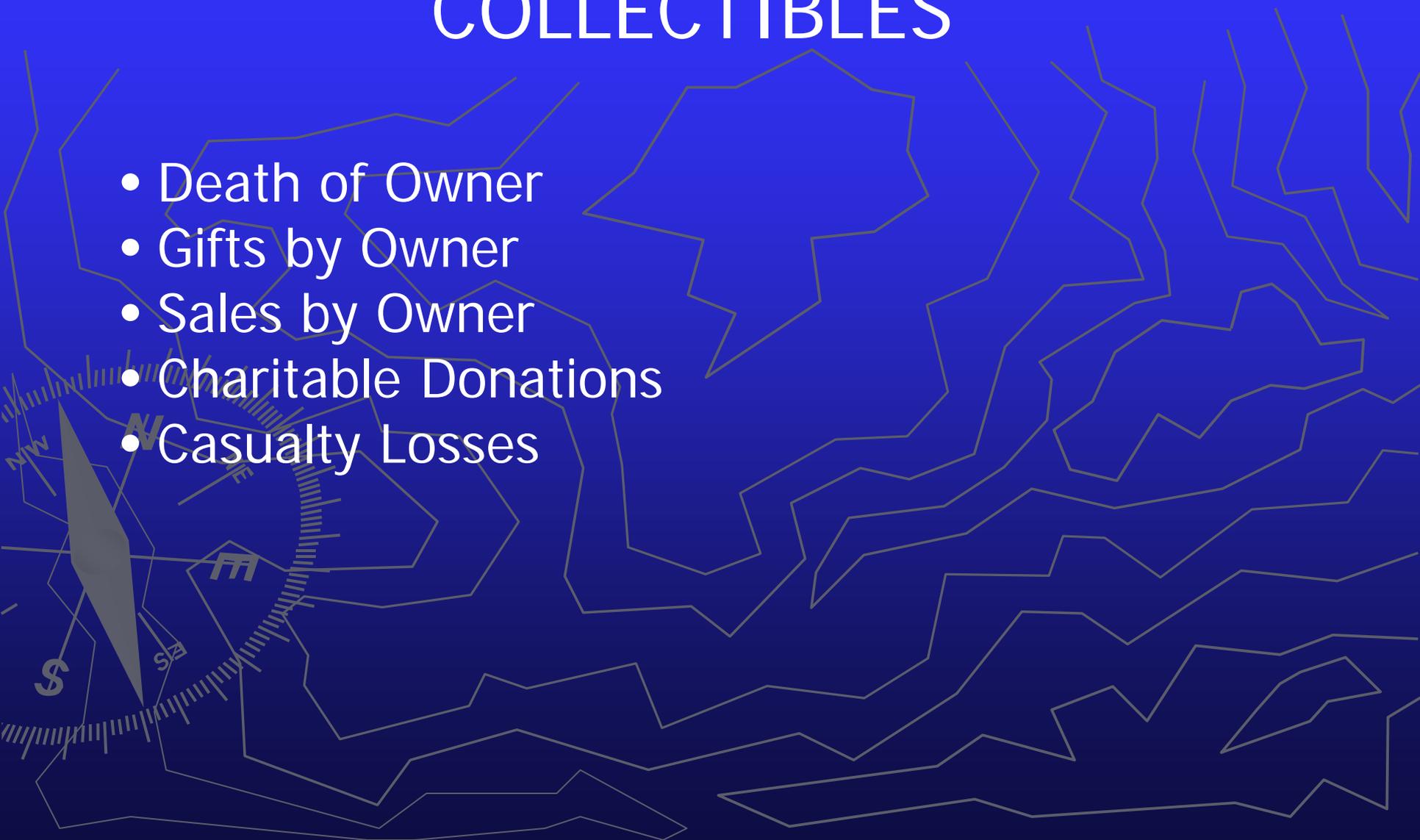


SITUATIONS INVOLVING COLLECTIBLES



SITUATIONS INVOLVING COLLECTIBLES

- Death of Owner
- Gifts by Owner
- Sales by Owner
- Charitable Donations
- Casualty Losses



TAX IMPLICATIONS AND RULES

- Income Taxation – Capital Assets

- “property held by a taxpayer (whether or not connected with his trade or business).”



TAX IMPLICATIONS AND RULES

- Income Taxation – Capital Assets
 - expressly excluded are “a copyright, a literary, musical or artistic composition, a letter or memorandum, or similar property, held by
 - (A) a taxpayer whose personal efforts created such property,
 - (B) taxpayer for whom such property was prepared or produced, or
 - (C) taxpayer in whose hands the basis of such property is determined ... in whole or part by reference to the basis of such property in the hands of a taxpayer described in subparagraph (A) of (B).”

TAX IMPLICATIONS AND RULES

- Income Taxation
 - Sales
 - 28% tax rate on “collectibles gain”
 - taxpayer must have held the collectible for more than one year.



TAX IMPLICATIONS AND RULES

- Income Taxation
 - Like-Kind Exchanges
 - Art and Collectibles which are capital assets eligible for like-kind exchange treatment
 - Needs to be same artistic medium



TAX IMPLICATIONS AND RULES

- Income Taxation
 - Like-Kind Exchanges
 - Definition of “like-kind” not well defined
 - Treas. Reg. § 1.1031(a)-2(c) examples:
 - Example (1). Taxpayer K exchanges a copyright on a novel for a copyright on a different novel. The properties exchanged are of a like kind.
 - Example (2). Taxpayer J exchanges a copyright on a novel for a copyright on a song. The properties exchanged are not of a like kind.



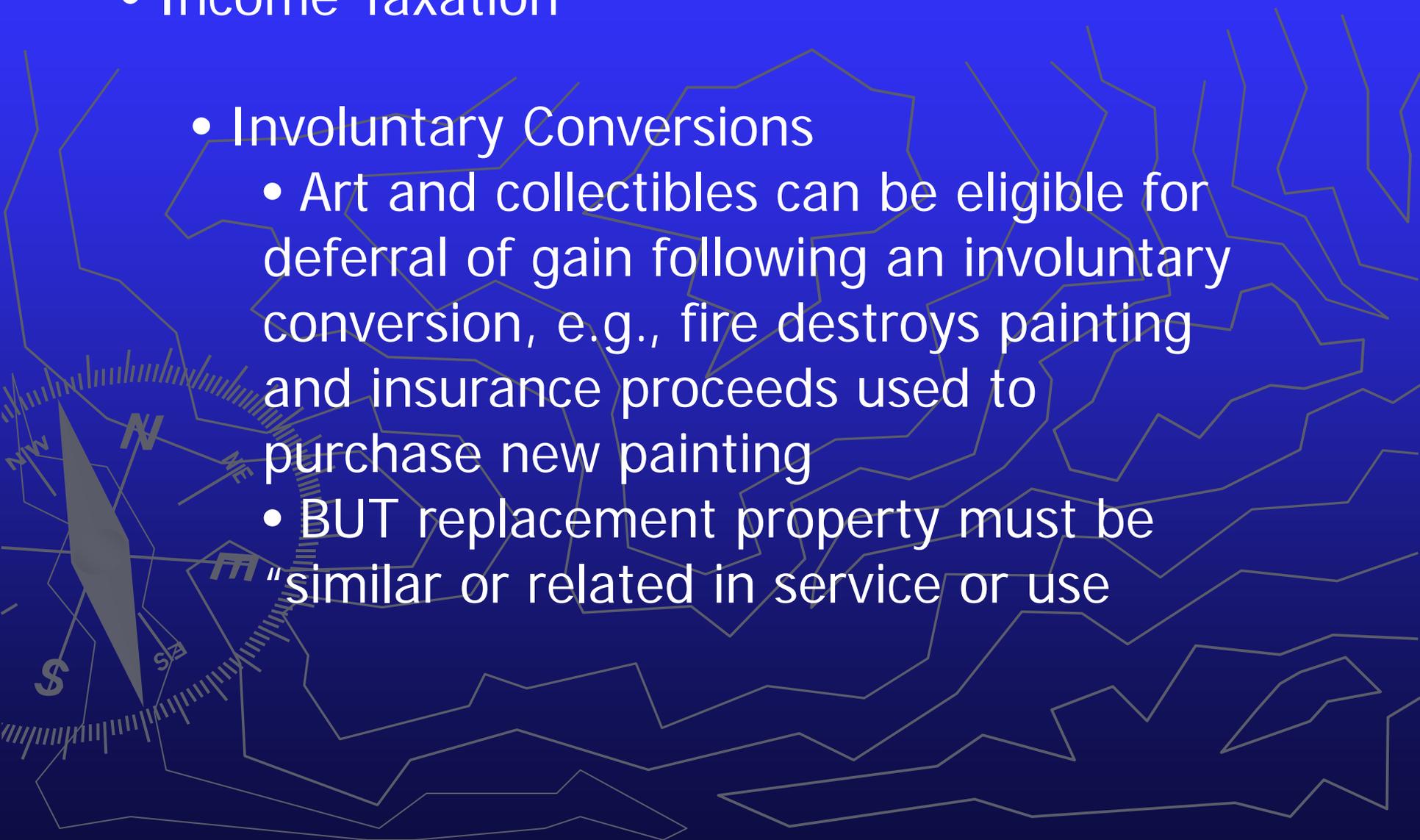
TAX IMPLICATIONS AND RULES

- Income Taxation

- Involuntary Conversions

- Art and collectibles can be eligible for deferral of gain following an involuntary conversion, e.g., fire destroys painting and insurance proceeds used to purchase new painting

- BUT replacement property must be "similar or related in service or use"



TAX IMPLICATIONS AND RULES

- Income Taxation

- Involuntary Conversions

- Different artistic mediums will not qualify



TAX IMPLICATIONS AND RULES

- Gift and Estate Tax
 - Federal Gift Tax is imposed on *inter vivos* transfers of property.
 - Lifetime taxable gifts are measured cumulatively
 - Tax is computed under a progressive rate structure with a top rate (2013) of 40%.
 - Taxpayers are granted a credit against the tax which will effectively shield the first \$5.25 million (2013 amount) of cumulative *inter vivos* taxable gifts.

TAX IMPLICATIONS AND RULES

- Gift and Estate Tax
 - Federal Estate Tax is imposed on estates which have a value, after certain allowed expenses and deductions, in excess of \$5.25 million for decedents dying in calendar year 2013.



TAX IMPLICATIONS AND RULES

- Gift and Estate Tax
 - The estate and gift tax is an integrated transfer tax system. Computationally, in very general terms, lifetime taxable gifts are added back a decedent's estate for calculation of the estate tax due. is geared to the value of the property transferred.
 - Both the gift tax and the estate tax are measured by the value of property. Value for purposes of both taxes is "fair market value"
 - Retail not wholesale

TAX IMPLICATIONS AND RULES

- Gift and Estate Tax
 - Appraisal required if
 - there are included among the household and personal effects articles having marked artistic or intrinsic value of a total value in excess of \$3,000 (e.g., jewelry, furs, silverware, paintings, etchings, engravings, antiques, books, statuary, vases, oriental rugs, coin or stamp collections), the appraisal of an expert or experts, under oath, shall be filed with the return.

TAX IMPLICATIONS AND RULES

- Gift and Estate Tax
 - Appraisal
 - The appraisal shall be accompanied by a written statement of the executor containing a declaration that it is made under the penalties of perjury as to the completeness of the itemized list of such property and as to the disinterested character and the qualifications of the appraiser or appraisers.

TAX IMPLICATIONS AND RULES

- Income Tax Charitable Donations of Art and Collectibles
 - Strict rules if value exceeds \$5,000



Specific IRS Requirements for Charitable Donations of Art

- Donate long-term capital gain items
- Donate to Public Charity and get acceptance
- Charity must have a "related" or "like" use
for the items



TAX IMPLICATIONS AND RULES

- Interesting Case on issue of long-term capital gain property:
 - *Jones v. Commissioner*, 10th Cir. 2009
 - Stephen Jones, attorney for OKC bomber Timothy McVeigh denied a \$300K charitable deduction for memoranda, laboratory reports, computer discs, and photographs produced to him by government in the Mc Veigh trial.
 - copies were made, categorized, and packaged specifically for taxpayer as attorney for McVeigh – not long term capital gain property



Retain Qualified Appraiser



Get a Qualified Appraisal Report



Meet your deadlines



Know when you need an appraisal and second opinion



Valuation and the Marketplace

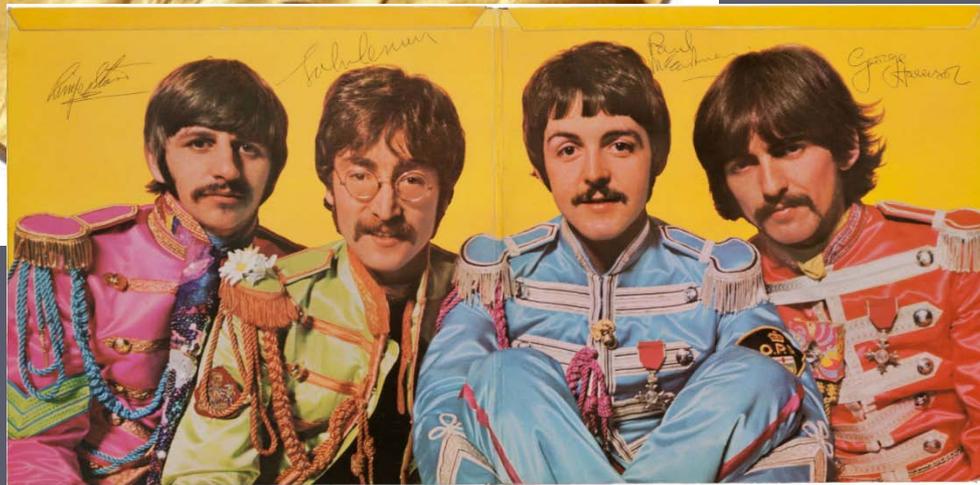
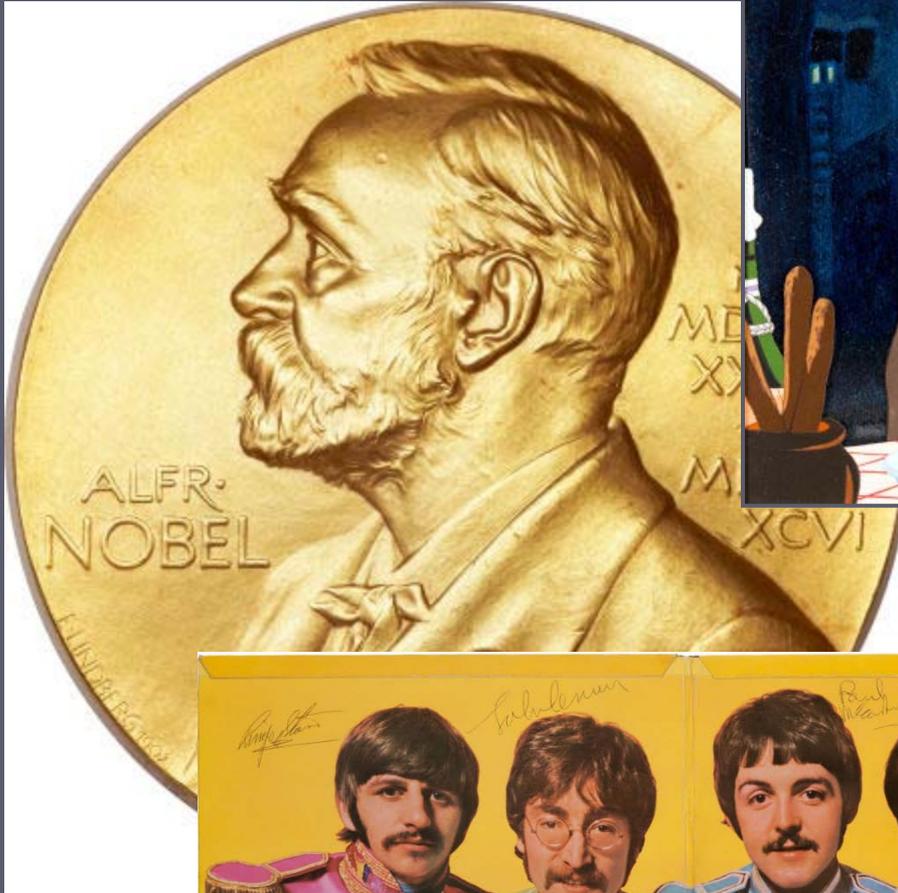




The Art and Collectibles Market



Specialty markets –the right expertise for proper valuations.



Factors that affect the value of property

Provenance

Rarity

Quality

Condition

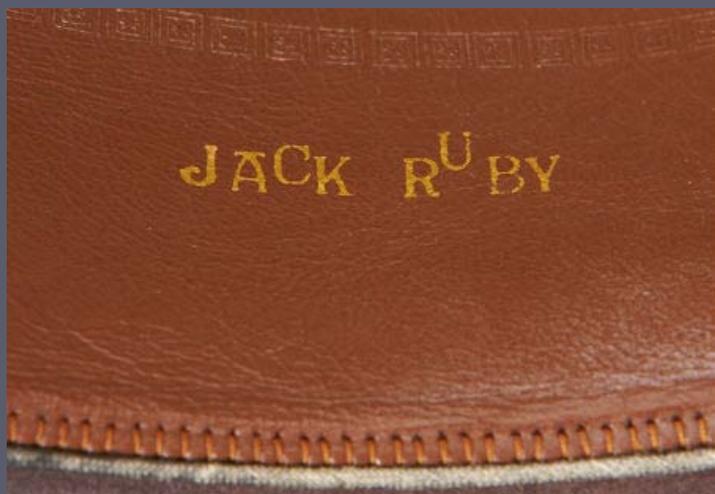
Fashion

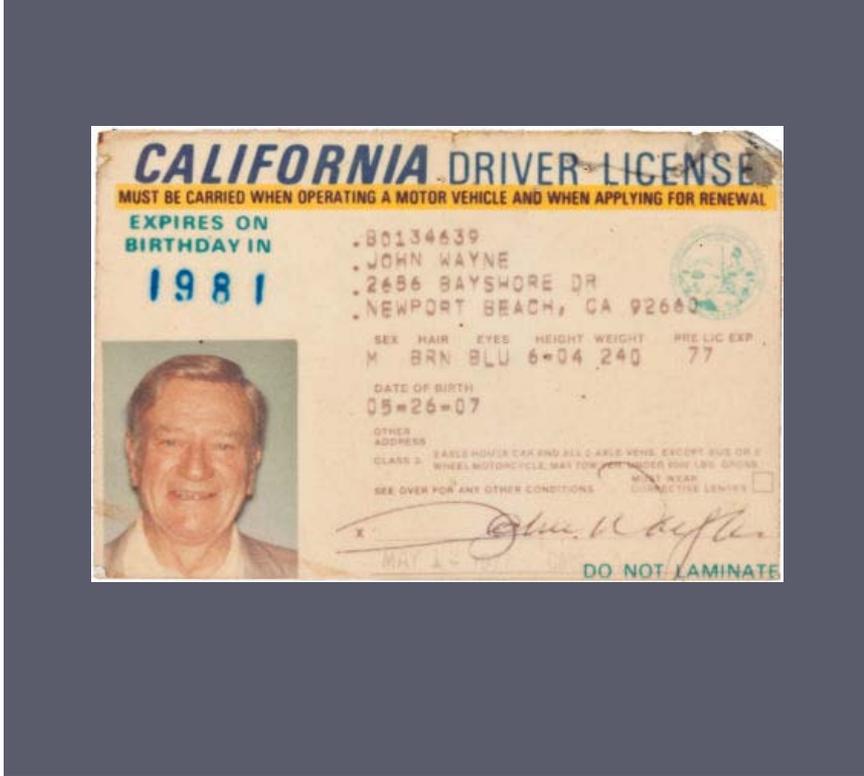
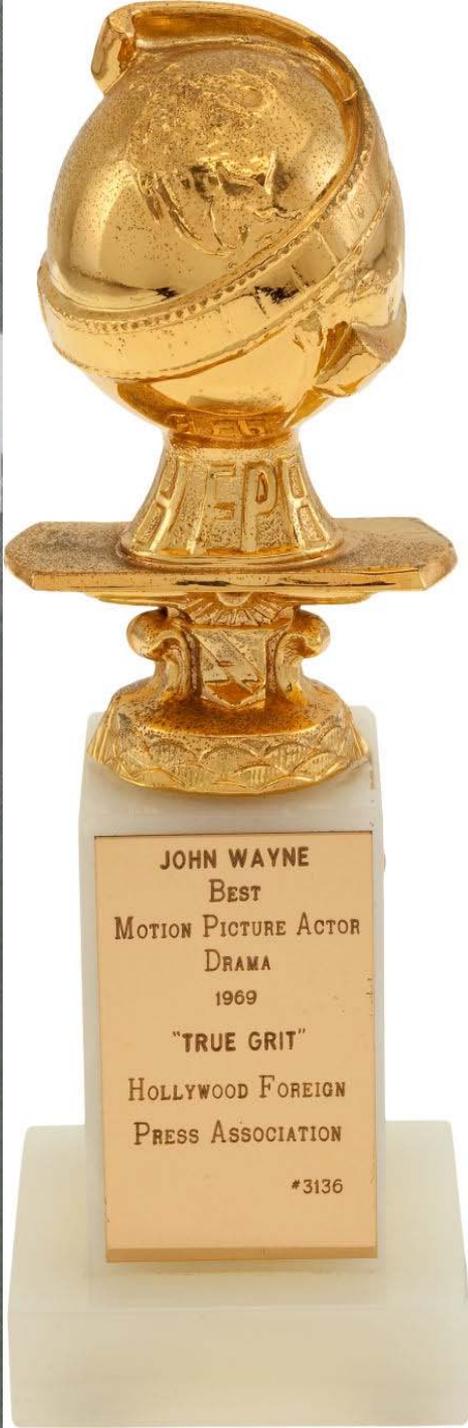


Provenance









Rarity



FEDERAL RESERVE NOTE

THE UNITED STATES OF AMERICA

THIS NOTE IS LEGAL TENDER FOR ALL DEBTS, PUBLIC AND PRIVATE

I 06030618 N

WASHINGTON, D.C.



I 51585118 N

9 *Mary Ellen Andrews*

SERIES 1995 *Robert E. Rubin* 9

Treasurer of the United States

WASHINGTON

Secretary of the Treasury

ONE DOLLAR



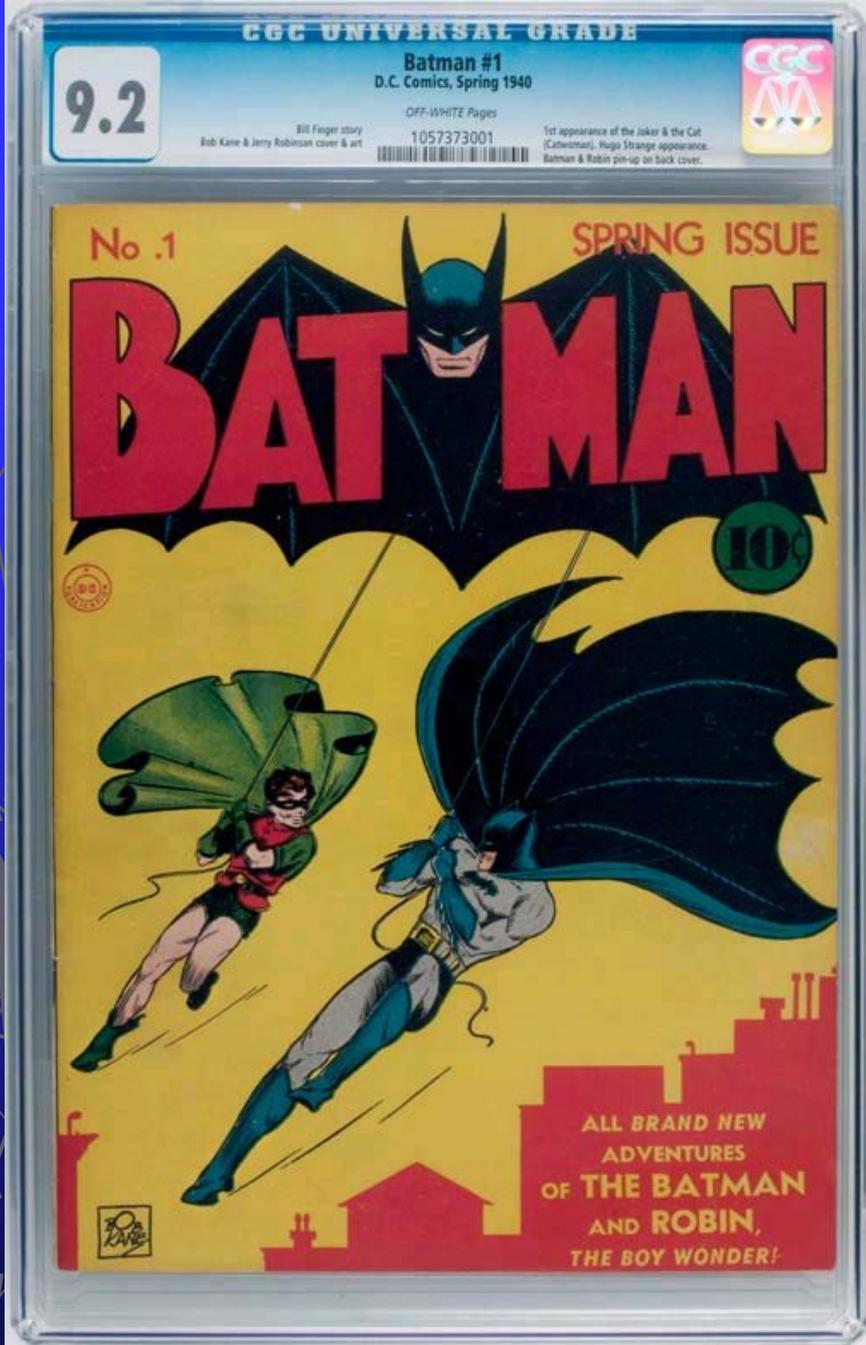
Quality





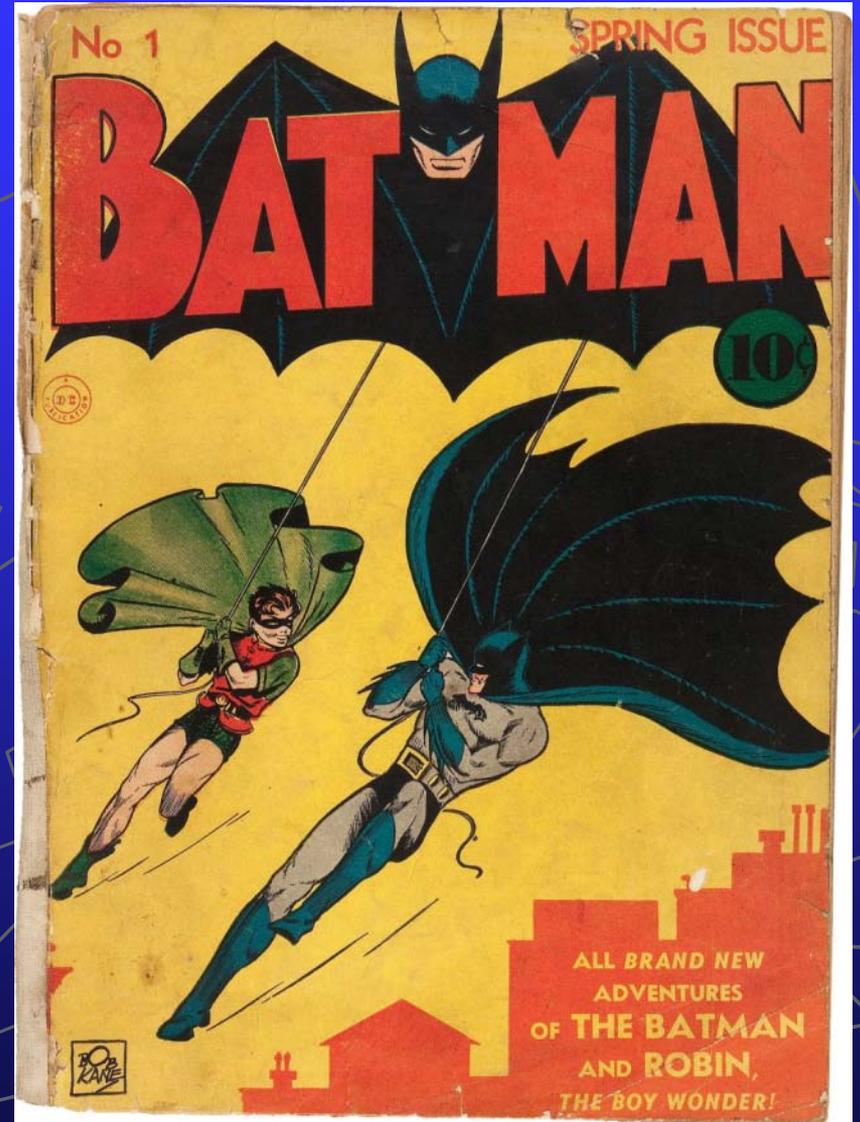
Condition





\$850,000

0.5 grade



\$6,500

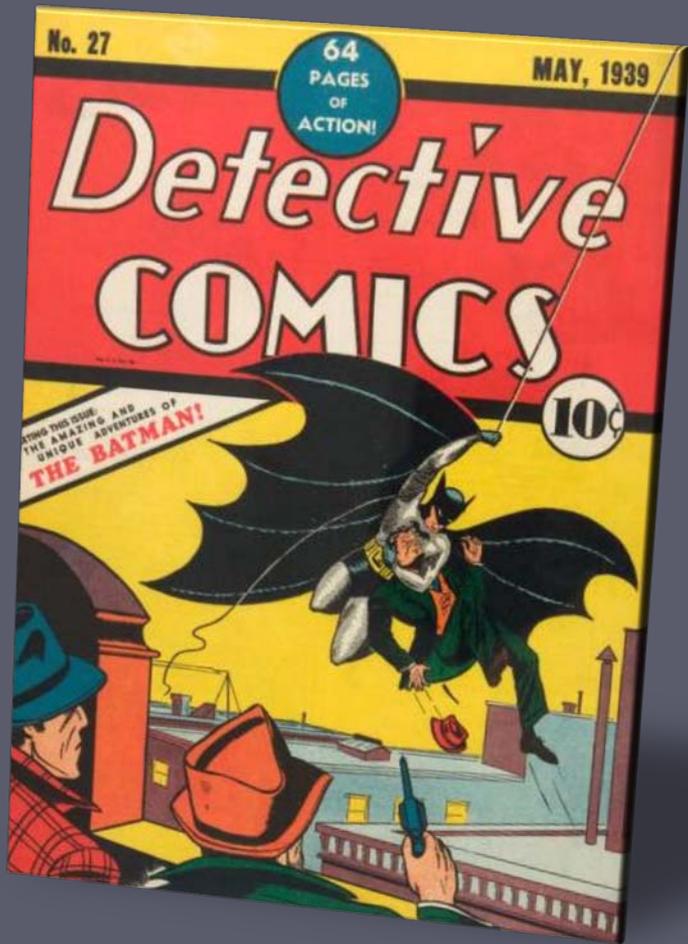
Fashion: Trends and Styles





Combination of Factors





VALUATION AND THE MARKETPLACE

Auction Estimate

\$100,000 to \$150,000

vs.

Appraisal

\$125,000 Fair Market Value

\$ 200,000+ Replacement Cost

True Value = Sold for \$110,000



Planning for a Collection

✓ Get an Accurate Assessment of Value

- Dealers, auction houses, research
 - Know what type value given – Antique Roadshow syndrome
 - Fair Market or Retail Replacement Value

✓ Need for formal written appraisal?

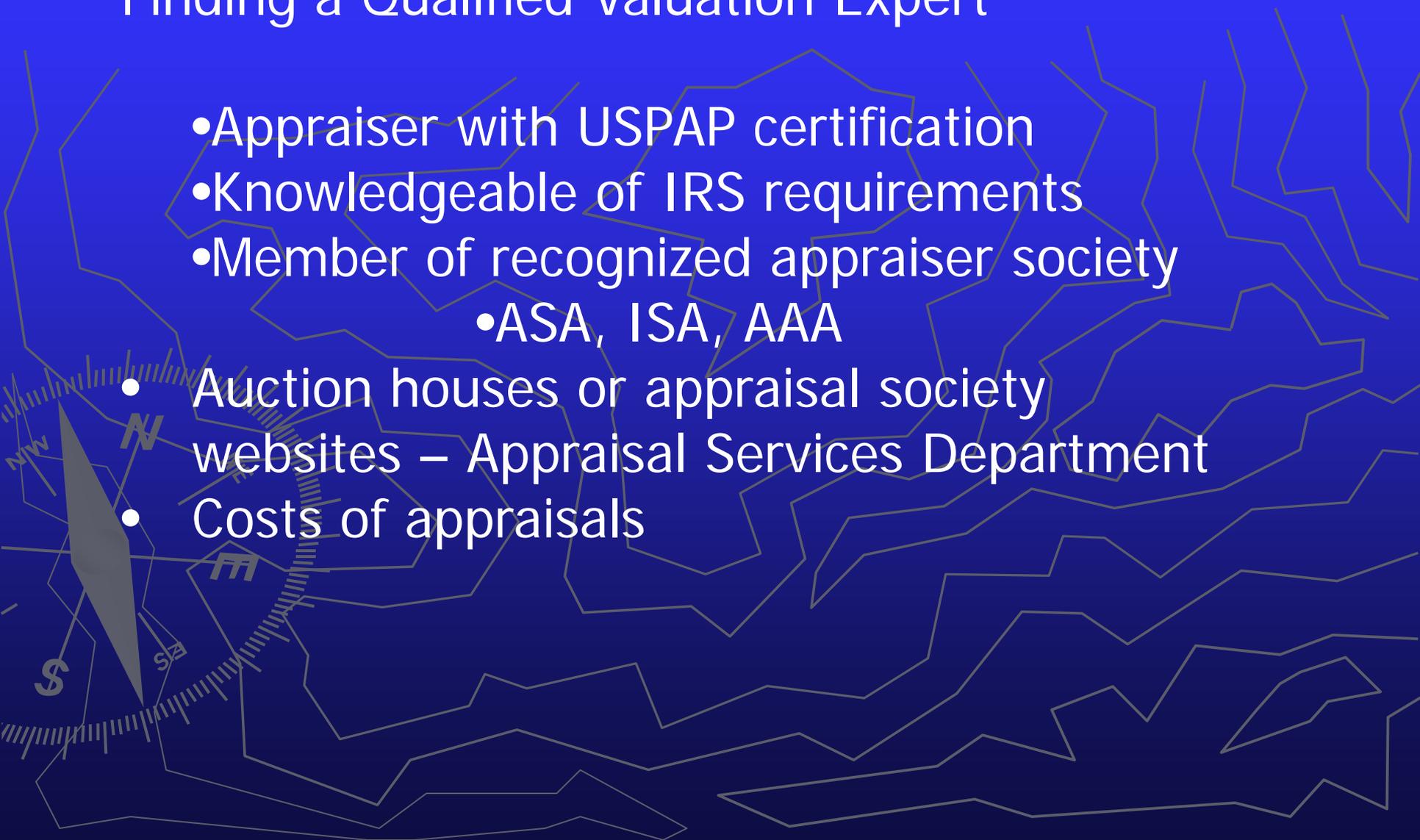
- Charitable Donation - Financial/Estate Planning - Gift Tax
- Equitable Distribution - Insurance - Estate Tax

✓ Helping Heirs, Executor and Beneficiaries

- Inventory of collection: locations, related paperwork, note items of value
- Sell during owner's lifetime? easier to distribute money, less burden on family/executor, they can keep collecting!

Finding a Qualified Valuation Expert

- Appraiser with USPAP certification
- Knowledgeable of IRS requirements
- Member of recognized appraiser society
 - ASA, ISA, AAA
- Auction houses or appraisal society websites – Appraisal Services Department
- Costs of appraisals



How Do I Dispose of the Art / Collectible

- Garage Sale or donate low value items
- Auctions
- Consignments or Estate Sales
- Major players in the marketplace
 - tiers of auction sales
 - National vs. local auctions
 - Get sale proposals

