

the artist
as philanthropist
strengthening the next generation of
artist-endowed foundations

a study of the emerging artist-endowed
foundation field in the US

Executive Summary

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EXECUTIVE SUMMARY

An artist-endowed foundation is a tax-exempt, private foundation created or endowed by a visual artist, the artist's surviving spouse, or other heirs or beneficiaries to own the artist's assets for use in furthering charitable and educational activities serving a public benefit. Artists' assets derive from art-related activities, as well as other sources unrelated to art. Among assets conveyed to artist-endowed foundations are financial and investment assets, art assets (such as art collections, archives, libraries, and copyrights and intellectual property), real property (such as land, residences, studios, exhibition facilities, and nature preserves), and other types of personal property.

PROJECT OVERVIEW

The mission of the Aspen Institute's National Study of Artist-Endowed Foundations is to help the next generation of artist-endowed foundations make the most of its donors' generosity in service to a charitable purpose. Its aim is to fill a significant information gap facing individuals involved in creating and leading new artist-endowed foundations. The complexity of forming and operating private foundations endowed in great part with artworks is generally recognized, as is the fact that the learning curve can be steep and sometimes costly. With evidence that the number of artist-endowed foundations is increasing and substantial artistic and financial assets are moving into the field, shortening this learning curve—thus helping to ensure that charitable resources will be spent on charitable purposes, as opposed to costly lessons—will have a significant philanthropic impact.

The Aspen Institute's National Study of Artist-Endowed Foundations, initiated in 2007, is the first effort to define and describe the artist-endowed foundation field. Artist-endowed foundations represent less than one-tenth of a percent of the total universe of 71,000 private foundations in the US, but are growing in number and have particular relevance to cultural philanthropy. Little understood in either the private foundation or not-for-profit cultural fields, artist-endowed foundations are worthy of study because of their increasing numbers and also because their distinctive asset mix, and the activities they undertake with respect to their nonfinancial assets, sets them apart from most other foundations. The Study aims to illuminate the origins, development, current status, and future prospects of this population, which is a potential force shaping cultural philanthropy and stewarding this country's significant postwar and contemporary art patrimony.

The Study has six components:

- 1) quantitative research, including a census of artist-endowed foundations and a data profile examining trends in formation and focus and projecting future development;

- 2) bibliographic research to identify literature relevant to and about artist-endowed foundations;
- 3) qualitative research based on interviews with individuals influential in creating and leading artist-endowed foundations to learn about variables that have an impact on foundations;
- 4) focus group convenings with foundation trustees, directors, and managers, as well as foundation donors and professional advisors, to explore practical and policy issues;
- 5) preparation of briefing papers authored by independent scholars to address critical issues identified during research; and
- 6) identification of opportunities to strengthen the emerging field on behalf of the next generation of artist-endowed foundations.

This comprehensive Study report presents research findings organized in three parts. The first provides an overview of the field, its development, and structure, concluding with a consideration of the field's prospects and recommendations on practice and future research. The second discusses considerations in foundation practice, both with respect to forming, sustaining, and terminating foundations, and in planning and conducting charitable programs. The third part encompasses the collected briefing papers authored by independent scholars as references for practice and policy. The Study report and its materials are available online at the Aspen Institute's Program on Philanthropy and Social Innovation (www.aspeninstitute.org/psi/a-ef-report).

HIGHLIGHTS OF STUDY FINDINGS

Quantitative Profile of the Artist-Endowed Foundation Field

A group of 261 artist-endowed foundations with Ruling Years from 1938 through 2007¹ was identified for the Study's research purposes; data were available for analysis on 239 foundations. Additional foundations continued to be identified, with identified foundations now totaling 300, including those extant and those active previously and subsequently terminated. The database used for analysis in 2007 and 2008 drew from foundations' annual information returns (Forms 990-PF), with 1990 being the earliest year digital data were available and 2005 the most recent year for which data on the greatest number of foundations were available at the time of analysis.²

The number of artist-endowed foundations has grown rapidly in the past 15 years; almost half were created in the decade between 1996 and 2005, corresponding with growth of 43 percent in the foundation universe overall. Most artist-endowed foundations are small, with 73 percent reporting assets less than \$5 million, similar to family foundations with 86 percent reporting assets that scale in the same period. The Andy Warhol Foundation for the Visual Arts, the largest foundation, reported \$230 million in assets for the tax year

ending 2005, while the smallest foundations, those just formed or those with living donors and functioning on a pass-through basis, typically held fewer than \$100,000 in assets (for example, Museo Eduardo Carrillo).

In 2005, artist-endowed foundations with data available for analysis reported aggregate assets of \$2.4 billion, fair market value, a more than three-fold increase in the decade since 1995. Art assets, totaling more than \$1 billion, represented 45 percent of all assets. More than half of all assets were classified as charitable-use assets, defined as assets used or held for use in direct charitable activities, these being charitable activities conducted by foundations themselves as opposed to charitable purposes realized by making grants to other organizations.

Between 1990 and 2005, artist-endowed foundations paid out \$954.7 million in charitable purpose disbursements. Of this, \$639 million, or 67 percent, comprised contributions, gifts, and grants, and another \$315 million, or 33 percent, comprised charitable operating and administrative expenses, including expense for direct charitable activities.

Update to 2005–2008 Assets and Grantmaking

To assess the impact of the current economic downturn, a sampling of aggregate assets and aggregate grantmaking compared data for 2005 to those for 2008, the most recent year in which data for the greatest number of foundations are available currently. The number of artist-endowed foundations holding assets of \$1 million or more increased from 113 to 127 in this period, and aggregate assets held by foundations of this scale increased almost 12 percent, from \$2.39 billion to \$2.68 billion. The aggregate value of total grants paid by the 30 foundations reporting the largest total grants paid in 2005 was \$42.7 million, and was \$52.5 million for those 30 reporting the largest total grants paid in 2008, excluding one-time extraordinary grants made in both years.

Twenty foundations with living artist-donors were among the foundations with assets of \$1 million and above in 2005, compared to 17 foundations with living artist-donors in 2008. Three foundations with living artist-donors were among the 30 foundations with the largest total grants paid in 2005, compared to five with living artist-donors in 2008.

Significant Trends

Almost three-quarters of artist-endowed foundations are associated with artists working in fine arts disciplines, including painters, 51 percent, and sculptors, 21 percent. The remaining foundations are associated with artists working as designers or architects; photographers; and illustrators, animators, or cartoonists. As is the case in the higher levels of the contemporary art world and other realms of professional art and design practice, artists associated with artist-endowed foundations are not diverse. Almost three-quarters of artists associated with foundations are male artists, and only nine percent are artists of color from either gender.

Artist-endowed foundations are concentrated in the Northeast and West, with 45 percent in New York and 11 percent in California, and the fastest rate of increase is in the West. More than one-third of artist-endowed foundations were created during the artists' lifetimes, but the portion created posthumously is increasing, growing from 50 percent of those formed prior to 1986 to 69 percent of those formed from 2001 on. The age of artists creating lifetime foundations has risen from an average of 64 years prior to 1986 to 74 years by 2005.

One-quarter of artist-endowed foundations are operating foundations, compared to 6.7 percent of all private foundations, and foundations with this legal status are increasing in number at a faster rate than nonoperating foundations. Contrary to expectations, operating foundations are active grantmakers, with some sustaining ongoing grant programs and others making grants dynamically, often grants of artworks.

Also contrary to expectations, nonoperating foundations classified a third of all assets as charitable-use assets and reported almost a third of charitable disbursements as made for charitable operating and administrative purposes, a level at the higher end of the range identified for the foundation universe overall. This points to the potential for strong involvement in direct charitable activities in addition to grantmaking, typically assumed to be the sole focus of nonoperating foundations.

Among both operating foundations and nonoperating foundations, grantmaking with artworks is an active practice, pursued programmatically or as an occasional activity. While grantmaking by artist-endowed foundations encompasses activities comparable to those found among private foundations generally, grants with nonfinancial assets (artworks and art-related materials) sets them apart. Also of note are the multiple modes for distributing artworks charitably, including grants and partial grants/partial sales—defined variously as bargain sales or gift-purchases.

Artists and their family members play a strong role in foundation governance. More than one-fourth of artist-endowed foundations reported the artist in a governing role, and one-fourth reported family members in the majority among foundations' governing bodies.

Field Taxonomy

Artist-endowed foundations can be categorized as one of four functional types: grantmaking foundation; direct charitable activity foundation—either a study center and exhibition foundation, house museum foundation, or program foundation (for example, a residency or education program); comprehensive foundation, which combines multiple functions, often including grantmaking; and estate distribution foundation, defined as one formed to accomplish the posthumous, charitable distribution of assets owned at the artist's death and not bequeathed to other beneficiaries.

Foundations created by artists are dynamic and can evolve in function. Foundations of living artists most often are grantmaking foundations, but upon receipt of full funding, including nonfinancial assets, following an artist's death, they may take on study center or exhibition collection functions or operate programs using an artist's real property. An artist's estate plan can create more than one foundation (for example, a grantmaking foundation and a program foundation operating an artist residency), or alternatively can establish a foundation and a related public charity, such as a house museum. Not all artist-endowed foundations exist in perpetuity. Some estate distribution foundations are created with a term limit, while others exist briefly in pass-through mode. Foundations that function as house museums are likely to convert to public charity status in order to garner broader support than provided by the artist's bequest.

Early History of the Field

The two earliest US artist-endowed foundations identified by the Study are the Rotch Travelling Scholarship (Ruling Year 1942), MA, and the Louis Comfort Tiffany Foundation (Ruling Year 1938), NY, the former with a precursor lifetime entity formed by architect Arthur Rotch and his siblings in 1883 and the latter with a precursor lifetime entity formed by the designer in 1918. Both have a generative mission, the former to advance architectural education through support to young architects for travel and study abroad and the latter initially by operation of a residency program and now by grants to artists and designers.

Foundation formation in the US picked up mid-century, exemplified by the Martin B. Leisser Art Fund (Ruling Year 1942), PA, created posthumously by the painter to assist student artists and support museum art acquisitions; the (Madge) Tennent Art Foundation (Ruling Year 1955), HI, set up during the painter's lifetime to operate a public art collection; and the Sansom Foundation (Ruling Year 1959), FL, established 21 years after the death of artist William Glackens by his family to own the artist's works and make grants supporting the arts and assisting animal welfare. This was the first artist-endowed foundation created to fund its grants through sales of an artist's works.

Among foundations formed by US artists who achieved postwar prominence are the Charles E. Burchfield Foundation (Ruling Year 1967), NY; the Josef and Anni Albers Foundation (Ruling Year 1972), CT; and the Adolph and Esther Gottlieb Foundation (Ruling Year 1976), NY. These represent three typical ways in which artist-endowed foundations are structured: with a function of grantmaking; with a function as study center and exhibition collection along with ancillary activities, such as artist residencies; and with a function of grantmaking combined with an exhibition program.

Artists' Demographics Influencing Foundation Formation

Artists' demographics point to a variety of considerations influencing decisions to create an artist-endowed foundation. The most prominent factor appears to be survivorship. Among foundations associated with deceased artists, more than 60 percent of those holding assets of \$1 million and above are associated with artists who were not survived by children; 40 percent had no immediate survivors—defined as a spouse, nonmarital life partner, or child—and 22 percent were survived only by a spouse or nonmarital life partner. Examples include foundations associated with Adolph Gottlieb, Hans Hofmann, Lee Krasner, Robert Mapplethorpe, Barnett Newman, Joan Mitchell, and Andy Warhol.

Artists' demographics also relate to motivations in charitable purpose. Among foundations holding \$1 million or more in assets, those associated with deceased artists who had immediate heirs beyond a surviving spouse or nonmarital life partner are more likely to function as study centers, exhibition programs, or house museums. Those associated with artists who had no immediate heirs or were survived only by a spouse or nonmarital life partner are more likely to be grantmaking foundations or include grantmaking among key functions.

Public Tax Policy as One Influence in Foundation Formation

Although estate taxes are not a factor when an artist's estate plan exclusively benefits a charitable organization, they can be a potential influence contributing to foundation formation in other circumstances. The estates of successful artists that achieve market recognition during their lifetimes can have substantial value but be significantly nonliquid. When such an artist's estate plan includes noncharitable bequests subject to estate tax, creation and funding of a private foundation is one means to accomplish the reduction of nonliquid, taxable assets held in the estate. At the same time, however, other aspects of tax policy, particularly the 100 percent federal estate tax marital deduction, might actually serve to delay or even eliminate the need for formation of foundations among those artists with surviving spouses.

Charitable Activities of Artist-Endowed Foundations

Support to Individual Artists and Scholars

Grantmaking to individuals, primarily artists but in some cases scholars, is an interest to varying degrees among one-third of the 30 largest artist-endowed foundations identified by the Study. Some of these foundations have a primary interest, as a single focus or one of a few program areas, and these divide between use of open application and eligibility by nomination. Others make awards or present prizes, both by nomination, typically in combination with other functions. A small group operates residency programs for artists and scholars. Many artist-endowed foundations choose to provide support to artists and scholars through grants to organizations.

Grants and Charitable Sales of Artworks

Almost one-quarter of foundations with assets of \$1 million or more make grants or charitable sales of artworks. Half do so periodically or at particular points in a foundation's lifecycle. Another half undertake programmatic initiatives, making grants of artworks or making partial grants/partial sales, sometimes referred to as museum sales programs, as an ongoing focus or a time-limited endeavor.

Grants to Organizations

Two-thirds of artist-endowed foundations with \$1 million or more in assets make grants to organizations, some on a discretionary basis, but the great majority on a sustained basis and as a primary focus. Much grantmaking targets art institutions, including museums, art education organizations, and those supporting artists and their works. Non-art purposes include support to address HIV-AIDS, animal welfare, social justice, mental health, the environment, and in many cases, community betterment generally in locales to which artists and their families have ties.

Direct Charitable Activities

More than half of artist-endowed foundations with assets of \$1 million or more realize their charitable purposes by conducting direct charitable activities, either exclusively or in combination with grantmaking. Half of these function as exhibition programs or as study centers with archives and study collections made available to scholars, curators, educators, and students for study purposes. Such foundations undertake research, sponsor scholarship, issue publications, assist art conservation, lend artworks to museums, organize and circulate exhibitions, prepare educational materials, and so forth. The other half divides evenly among functions as house museums open to the public; operation of artists' and scholars' residency programs or art education programs; and multiple functions, such as grantmaking in combination with exhibition programs.

FINDINGS ON FOUNDATION PRACTICE

The Study examined foundation practice across a number of topics, including: foundation formation, governance and management, programmatic use of artists' assets, foundation economic models, and overall foundation viability. Ten key findings hold the greatest significance for the next generation of artist-endowed foundations.

Relevant expertise in legal advising

Mistakes costly to artist-endowed foundations often are associated with legal advising that lacks expertise in private foundation law. Effective advising of artist-endowed foundations requires expertise in private foundation law (which is not the same as art law), intellectual property law, trust and estate law, or other areas of law. Individuals creating and managing artist-endowed foundations are responsible as clients to retain and work with appropriate legal counsel.

Fiduciary responsibility for professional development

As in the greater foundation universe, many individuals who become leaders and board members of artist-endowed foundations do not have experience in foundation management and regulation. They might be expert in related areas, such as art museums or art history, which are governed respectively by the law of public charities and by peer-group professional guidelines, each different than for private foundations. Managers and board members of artist-endowed foundations are responsible for seeking professional development to educate themselves in their new roles.

Uncertainty about conflict of interest

There are varied opinions among legal advisors with respect to how laws regulating conflict of interest apply to artist-endowed foundations. Some new foundations with missions to educate about and promote an artist's works are being formed with boards whose members include persons that own, sell, and license the artist's works, potentially benefiting economically from the foundation's activities and heightening possible conflict of interest risks, particularly in the absence of experienced foundation management.

Artists' lifetime foundations

Artist-endowed foundations active during artists' lifetimes differ significantly from those active posthumously. Artists' lifetime foundations focus on grantmaking or, in some cases, conduct programs such as residencies. They do not own the artist's artworks or intellectual properties or undertake study and exhibition activities focused on the artist's oeuvre, as do posthumous foundations. These types of activities by an artist's lifetime foundation might inadvertently breach laws prohibiting private benefit and self-dealing if they serve to promote the artist's career, thereby benefiting the artist economically.

Factors in foundation viability

Artist-endowed foundations require administrative competencies among individuals in governance and staff roles in four key areas: program expertise—effective implementation of direct charitable activities and grantmaking programs that merit exempt status; curatorial expertise—knowledgeable care and appropriate disposition of art collections, archives, and intellectual property, whether intended for income purposes or charitable use; business management expertise—capable transformation of the diverse resources contributed under an artist's estate plan into a sustainable economic enterprise; and foundation administration expertise—basic knowledge of how to operate for public benefit consistent with private foundation law and regulations. The practice of forming foundations with boards comprising only artists' relatives and associates might not provide the required competencies.

Realistic assumptions about art

Artist-endowed foundations funded only with art will not be viable unless the art has economic value. If art sales did not support the artist during his or her lifetime, art is unlikely to be sufficient as a foundation's sole resource. Art that requires a long-term strategy to develop economic value must be supplemented by financial resources sufficient to sustain the foundation and its programs and care for the art in the meantime. Artworks classified as charitable-use assets, thereby excluded from required annual distribution calculations, must actually be used, or held for use, in direct charitable activities.

Uncertainty about commercial activity

In support of their charitable and educational missions, artist-endowed foundations endowed with art collections and intellectual property periodically sell art, license intellectual property, edition works for sale, and engage the art market in other ways. Educational and charitable purposes and periodic commercial activities often intertwine, with realization of educational value in some instances dependent on economic activities that enable broad dissemination and public access to artists' creative works and principles. There are differences of opinion in some cases as to how such activities with foundations' assets relate to laws limiting business activity and holdings by exempt organizations and private foundations.

Public benefit, charitable purpose, and professional practice

There can be confusion among artists' heirs and beneficiaries about the change from private purpose to public benefit when artists' assets are contributed to private foundations. Decisions about programmatic use and access to archives no longer are a private individual's prerogative, but are institutional, based on fiduciary responsibility for assets subsidized through tax exemption to serve a public benefit. Legacy stewardship is not a charitable purpose and does not suffice as a foundation's mission, which is educational or charitable and benefits individuals unrelated to the artist.

Public benefit derived from charitable-use assets

Foundations increasingly choose to classify art assets as exempt purpose assets, used in direct charitable activities such as study centers and exhibitions programs, and as such, excluded from calculation of the annual charitable distribution requirement. As a greater number of art collections flow into the artist-endowed foundation field in the coming decades, the scale of assets classified as exempt purpose assets will increase substantially. Effective realization of the charitable use of such assets will be important to justify this practice.

Transparency and visibility

Spurred by heightened regulation and public concern, a movement toward greater transparency is advancing in philanthropy. As they grow in number, artist-endowed

foundations have the opportunity to increase their visibility, offering inspiration to future artist-donors, educating policymakers about how they differ from art museums and proprietary artists' estates, and informing the public about their charitable and educational purposes, which are supported through periodic art sales, as well as development and licensing of their intellectual properties.

Finally, formation of artist-endowed foundations most often is related to estate planning. The average age at which artists are creating lifetime foundations, now 74 and rising, indicates estate planning is taking place ever later in artists' lives. In some cases, options for effective estate planning strategies narrow with age. Beginning estate planning earlier in their lives can offer artists a greater range of choices to realize plans for both family members and for posthumous philanthropy.

LOOKING AHEAD

Field Growth and Development

Demographic data on aging artists suggest that the number of those in a position to create a new foundation will grow. Some of these artists will choose to create a foundation, expanding the artist-endowed foundation field even as a small percentage of foundations continues to terminate or convert to public charity status. Surviving spouses currently managing artists' estates will make their own estate plans, in some cases creating new foundations. Despite the current economic downturn, the field's assets are likely to expand. In addition to new foundations, foundations created in the past decade and funded annually by living donors will receive full funding upon their founders' deaths.

The types of artists creating foundations and types of assets contributed will continue to broaden as artists active in a greater range of media reach their seventh decade. The number of women artists and artists of color in a position to create a foundation will increase, but whether that will translate to greater diversity among artists who do create foundations—as well as among foundation boards, staff, and program interests generally—is difficult to predict. However, as a positive sign, among new foundations are several whose programs take up matters of diversity in race and ethnicity, gender, and sexuality.

Opportunities to Strengthen the Field for New Artist-Endowed Foundations

With artist-endowed foundations poised to expand in number and aggregate assets, the Study's findings point to seven objectives whose realization will strengthen the artist-endowed field overall. In so doing, these objectives will help ensure that the next generation of artist-endowed foundations has the greatest potential and best opportunity to fulfill its donors' charitable intentions:

- 1) clear visibility of artist-endowed foundations, their programs, and their commitment to public benefit;
- 2) transparency in foundation governance and administration;
- 3) effective practice in foundation governance and management by trustees, directors, and officers;
- 4) optimal public benefit deriving from artworks classified as charitable-use assets;
- 5) informed choices about economic viability by those creating foundations;
- 6) access to the experiences of established foundations in developing charitable programs; and
- 7) increased information about alternative forms for artists' posthumous philanthropy.

Recommendations for Future Research

A recommended agenda for future research on critical issues identified by the Study focuses on five areas:

- 1) expanding the availability of relevant data about the artist-endowed foundation field;
- 2) stimulating policy analysis of the dual roles played by art and intellectual property assets and associated charitable, educational, and commercial activities;
- 3) encouraging policy scholarship and discussion concerning potential conflict of interest risks associated with artist-endowed foundations' unique characteristics;
- 4) developing professional practice principles, including for institutions and individuals stewarding artists archives, for artists bequeathing their estates to museums and educational institutions, and for artists' lifetime documentation and inventory practice; and
- 5) increasing information exchange and exploration about effective strategies for posthumous philanthropy by artists for whom a private foundation is not a viable option economically.

Finally, the Study's quantitative research should be updated with 2010 data in order to provide the next five-year benchmark for comparative analysis of the field's development over 20 years. Data for tax year 2010 should be available for the greatest number of foundations by 2012.

DISSEMINATION

The Study report and its materials are available online at www.aspeninstitute.org/psi/a-ef-report and also can be purchased in hard copy at the Aspen Institute's online bookstore. Over the coming year, the Study's findings and recommendations will be disseminated through presentations at conferences and meetings of professional organizations in the arts, philanthropy, law, and related fields, and through release of additional publications and materials.

CONCLUSION

The history and evolution of the artist-endowed foundation field is the story of individual artists, and often their family members and associates, committed to a characteristically unique cultural and philanthropic vision, few of whom assumed that a broader enterprise would emerge from their individual efforts. To their great credit, artists whose creative works and generosity made possible the earlier generation of artist-endowed foundations have contributed defining concepts to what is now an emerging field. Providing assistance to realize talents of artists and creators at all stages of their careers, establishing an enduring cultural resource as reference and as inspiration to specialists and to the general public, helping to better local communities and support efforts that define the humanity of our world for all its beings—these themes found among the earliest artist-endowed foundations are evident among foundations today. There can be little doubt now that there will be artists who have philanthropic visions, charitable intentions, and exceptional resources of some character and scale to commit to their realization. The task at hand is to make available useful information and develop an informed and supportive environment to ensure that the next generation of artist-endowed foundations has the greatest potential and best chance to fulfill its donors' charitable intentions.

¹ The Ruling Year is the year the Internal Revenue Service approved a foundation's application for recognition of tax exemption, and is used by the Study to define a foundation's year of creation.

² Analysis focused comparatively on benchmark years at five-year intervals from 1990 to 2005. Aggregate revenue and disbursements were analyzed across the 15-year period. A current snapshot profiled the field as of 2005.