

PAINTING DAMAGED IN TRANSIT? HERE'S WHAT TO DO

Recently, I received a call from an artist who had borrowed one of her own paintings from a collector (not me) for a show. The painting had been damaged in transit and the artist was beside herself: the work was one of her best, the collector was important, and the damage was extensive. The artist had spoken to other artists and collectors, and each of them had given her incorrect or incomplete advice.

Having a painting damaged in transit is not uncommon. While I would like to say that every borrower, art handler, and shipping company treats artworks in their care like their own, I must admit, sadly, this is not always the case.

So, what should you do when an artwork is damaged in transit? While the answer depends on whether you are the owner, seller, borrower, or artist, the following general principles are likely to apply.

- 1. Insure the work.** First, never ship artwork without insurance. And if you are buying work, make sure you understand who is responsible for insuring it when it is shipped. My wife, Dr. Elaine Melotti Schmidt, and I maintain “nail-to-nail” coverage, meaning that a work is covered from the time it comes off the wall or easel and comes to us and is installed, and vice versa. But this may not be the case for everyone. So make sure you have insurance, know what it covers, and understand who is entitled to payment if work is damaged.
- 2. Note the damage on the papers.** When there is damage, note it on any papers the freight

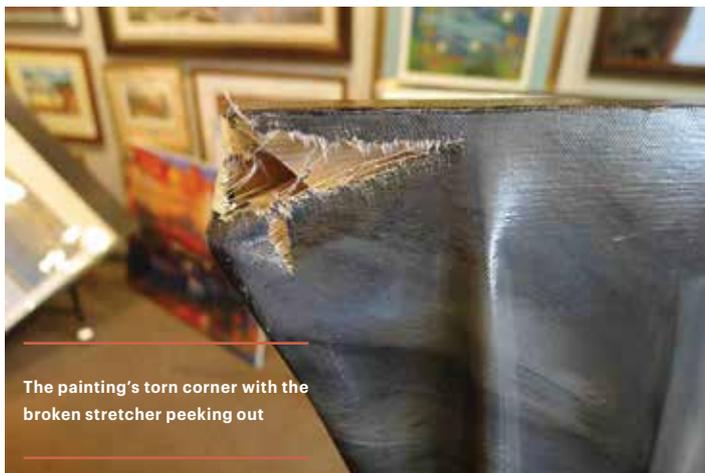
company asks you to sign. Alternatively, you might refuse delivery, but this might not be do-able if you already own the work. Making notes is sometimes uncomfortable, but you should force yourself to make a notation even if the delivery person tells you not to worry about it. A notation can make a pivotal difference if the shipping company later denies the work was damaged at the time of delivery. It is especially important if you bought the insurance from the shipping company. By the way, a delivery person cannot stop you from making notes, such as “work received in damaged condition,” on the papers you are asked to sign. Tip: the Doctor and I try to uncrate or unpack works in the presence of delivery persons so that if there is damage, they see it.

- 3. Make a visual record.** After noting the damage on the papers (and, frankly, even before), make a visual record with a phone or other camera, paying particular attention to places where there is visible damage,



The painted canvas has been torn from its wooden stretcher.

■ Another view of the torn canvas



The painting's torn corner with the broken stretcher peeking out



The shipping crate's broken corner



The shipping crate sustained significant damage at top left.

including to the crate or packaging. Photos of any damage to the work itself are very important and these photos should be extensive. If you can, get the delivery person and the damage in the picture together.

4. **Contact the shipper.** After the photographing, contact the shipper and let them know there's a problem. This is especially important if you bought insurance from the shipper. If they say, "Tough, it's not our problem," you don't have to agree. By letting them know, however, you prevent them from saying later they were not informed. By the way, written communication (e.g., e-mail, letter) following an initial phone call is important.
5. **Notify the insurer.** If there is insurance, the next and probably most important step is notifying the insurer. Most policies require a timely written notice of loss to the insurer. To make sure you know what is required, look at the policy. Generally, just as with notification of the shipper, best practice suggests a telephone call followed by a written notice including photos and details, unless the policy requires otherwise. This starts the "claims process." Keep in mind that the insurer looks on your claim as "business as usual," no matter how unusual it may be to you, and it is generally appropriate to cooperate with the insurer's reasonable requests.
6. **Find a conservator/restorer.** If the work is not a total loss, you should team with the insurer to find an appropriate conservator to fix the work. (An easy place to start your search is culturalheritage.org/about-conservation/find-a-conservator.) Alternatively, if the work is a total loss, the insured should make a claim for the entire insured value of the work. Generally, a "total loss" claim requires more inspection and negotiation, so expect this.
7. **Or, contact the artist for repairs.** If an artwork is damaged but not "totaled," it is almost always best if the artist who created the work repairs it. This way, the repairs are in the original author's own hand. Of course, this assumes the artists are around and the repairs are within their capabilities. For example, if a painting has a scuff or crack in the paint, this may be easily fixed by the artist. If, however, the damage is more extensive, repairs might best be left to a conservator.

Note to artists: Don't be unwilling to make repairs to your own work. As the author of the work, you know best how it should look when fixed. But know your limits. If the necessary repairs are beyond your capability, decline to do them.

8. **No repairs without everybody on board.** It is impermissible for anyone, even the author of the work, to repair damage without the written consent of the owner. And if someone thinks an insurance company should pay, then you will need the consent of the insurer, too. In the case of my artist friend whose work was damaged in transit, it would be best if she repaired it, but only with the consent of the owner and, if insurance is paying, the consent of the insurer. Note that if the artist is making the repairs, he or she is generally entitled to charge for that new labor, including reasonable travel expenses. These details should be discussed and agreed upon before any repairs are undertaken.

9. **Diminished value.** Damaged paintings that have been repaired are usually worth less than the same work without repairs. As such, the insured may be entitled to reimbursement from the insurer for the "diminished value" of the work. Many insurance companies really dislike this sort of claim and will argue that there's no way to figure out how much the work's value has been reduced. Of course, that isn't necessarily correct, and you don't have to agree. A look at the policy, and maybe a talk with a lawyer, are good ideas. Just know that this may be another element of damages for which the insurer should compensate.
10. **Get a lawyer.** All of the foregoing is just a general outline, not legal advice. Some insurers can be very aggressive in their approach to settling art damage claims while others are more relaxed. If you aren't sure you are being treated fairly, you should seek legal advice.

As for my artist friend who borrowed one of her own works that was then damaged, what should she do? Her instinct is to repair the painting herself. This is great, but the first order of business is to document the damage and note it on the shipping documents, then notify the shipper, the owner, and the insurer. Once the claims process has begun, if the owner and insurer are willing, the artist might repair the work herself and charge the insurer for the cost of making the repairs. While all of this sounds complicated, the process can be fairly straightforward and should result in a quick resolution. ●

STEVEN ALAN BENNETT is, along with his spouse, Dr. Elaine Melotti Schmidt, the founder of *The Bennett Collection of Women Realists* (thebennettartcollection.com) and *The Bennett Prize* (thebennettprize.org), a biannual prize that awards \$50,000 to a woman painter to enable her to mount her own traveling exhibition. Bennett spent many years as general counsel of USAA, the nationally recognized property and casualty insurer.