

NEW YORK'S NEW MUSEUM PROPERTY LAW: SECTION 233-AA OF NEW YORK STATE EDUCATION LAW

This law gives the state's museum community a process to establish ownership of undocumented collections, long-forgotten loans, and doorstep donations—property that has long been a burden for many institutions. New York is the 36th state to have a statute to this effect.

Without the law museums and other collecting institutions were without clear, legal guidelines for making a claim of ownership for many objects that might have been deposited at the museum before procedures such as deed of gift forms and short-term loans were utilized. This law establishes a fair mechanism by which museums may resolve old loans and the ownership of undocumented property.

Further, the law **requires museums to offer their collection management policies to donors** and it prohibits museums from using deaccessioning proceeds for anything other than acquisition, preservation and care of collections.

This article summarizes the main provisions of the law and how you can put it into practice. This information is intended as a summary only. Anyone preparing to implement the provisions of the law should become familiar with the complete document and seek the advice of an attorney if they have any questions.

WHAT IS THE MUSEUM PROPERTY LAW

The new law amends Section 233-a of the state education law, which provided recourse only to the New York State Museum. It went into effect on September 4, 2008.

WHOM IT COVERS

The law covers a wide variety of collecting institutions, including but not limited to museums, historical societies, zoos, aquariums, botanical gardens, and arboreta, having collections as a stated purpose in its charter. The law states that the institution must be a governmental entity or a not-for-profit corporation.

WHAT IT COVERS

1. Acquiring Title to Property

The law covers tangible objects (animate or inanimate) in a museum's care which have "intrinsic" historic, artistic, scientific or cultural value.

Two types of objects are covered: 1) **unclaimed property**, meaning property held with a loan agreement which has either expired or was loaned for an indefinite term (often called

“permanent loans”); and 2) **undocumented property**, meaning property for which the museum cannot determine the lender, donor or owner after making a good faith search to find the owner (this property is often deemed “found in collections”).

A museum must demonstrate that it has held unclaimed indefinite loans or undocumented property for at least **ten years** before beginning the process. The exception to the ten year period is for loans of a definite period of time where the lender has failed to claim the property. In this instance, the museum must demonstrate that it has held the property for **five years** after the date upon which the loan was to have expired.

2. Notifying Collections Donors of Institutional Collecting Policies, Including Deaccession

The law also requires museums to provide donors or prospective donors with a written copy of their mission statements and collections policies, which shall include policies and procedures pertaining to deaccessioning (the NYS Board of Regents’ Rules require chartered museums to have written collections policies that address deaccessioning).

(As a safeguard measure, MANY suggests that institutions create a check-off box on their deed of gift forms affirming that a mission statement and collection policies were offered to a donor.)

If the museum has knowledge of a planned bequest of property, it must provide the testator with a written copy of its mission statement and collections policy, which shall include the museum’s policies and procedures pertaining to deaccessioning.

(If you have your mission statement and collections policy openly available on your website, you are considered compliant with the planned bequest of property provision.)

3. Use of Proceeds from the Sale of Property the Museum Acquires Under this Law

Proceeds derived from the sale of property the museum acquires under this law will be used only for collection acquisition or protection and care of the collection. Proceeds cannot be used to defray the ongoing operating expenses of the museum. (The NYS Board of Regents’ Rules apply this to all permanent collections in chartered museums.)

4. Applying Conservation Measures to Loaned Property

A museum will notify lenders in writing of any known injuries or losses of loaned property or of the need to apply conservation measures. The notice will advise the lender to his or her right to terminate the loan in lieu of conservation, and no later than thirty (30) days after having received the notice, either retrieve the property or arrange for its isolation and retrieval.

Unless there is a written loan agreement to the contrary, the museum may apply conservation measures to property on loan without giving formal notice or first obtaining the lender’s permission if immediate action is required to protect the property on loan if it is a hazard to the health and safety of the public or museum staff provided that the museum is 1) unable to reach the lender at the lender’s address or phone number before the time by which the museum determines the action is necessary, or 2) the lender does not grant permission within three (3) days or terminate the loan/retrieve the property within thirty (30) days.

Notwithstanding the foregoing, the statute also provides that if immediate conservation measures are necessary, the museum does not need to seek the lender's permission or wait for the lender to terminate the loan and retrieve the property.

Who pays for such treatment, depending on the situations outlined in the law, is also addressed.

5. Collection Record-keeping

Museums will maintain records of acquisition, of deaccession, and loan of property currently held. These records will contain the names and contact information of donors and lenders, descriptions of property; and terms and restrictions of acquisition, deaccession or loan, including copies of all documents conveying title or loan.

In the case of property acquired pursuant to this law, records documenting the search for identity and last known address of the lender, and copies of all notices and other documents prepared or received by the museum in connection with the acquisition of title to such property shall be maintained by the museum as part of the property's file.

WHAT THE LAW DOES NOT COVER

Museums cannot use this statute to take title to two types of property: 1) "Nazi-era" (1933-1945) disputed works, and 2) stolen property.

If you want to learn more about these issues visit the American Association of Museums (AAM) Nazi Era Internet Portal, www.nepip.org, and the Art Loss Register, www.artloss.com.

HOW TO ACQUIRE TITLE

Below are the main provisions for compliance when implementing the law at your institution. If you do choose to utilize the law, we recommend reviewing the complete document to ensure proper compliance.

• Unclaimed Property - Where Lender is Known

You are required to provide written notice ("Notice of Termination") via certified mail, return receipt requested, to the lender/last known owner at the most recent address of your intent to claim title under the provisions of this law. [see sample letter below]

If the lender/last known owner does not respond to the "Notice of Termination" letter within 120 days of receipt of the letter, the museum will send a second notice to the lender [see sample letter below]

If the lender/last known owner does not respond to the second notice within one hundred twenty (120) days of receipt of the notice, the museum shall automatically acquire all of the lender's rights to the property.

• Unclaimed Property – Where Lender is Unknown or When Certified Letter is Undeliverable and Undocumented Property

Notwithstanding any other provision of law regarding abandoned or lost property, a museum may acquire the rights of the lender, donor, or owner to unclaimed property and

undocumented property by giving notice by publication each week for three consecutive weeks in a newspaper of general circulation, in the county where the museum is located and the county of the last known address of the lender/owner (if known). *[see sample notice below]*

If no one contacts the museum with documentation or other evidence establishing ownership interest in the property within 180 days of the notice's appearance in the newspaper, the museum will place a brief description of the property on the Unclaimed Funds Registry of the Comptroller's website for one hundred eighty (180) days.

If no one contacts the museum with documentation or other evidence establishing ownership interest in the property prior to or within 30 days following the conclusion of the Unclaimed Funds Registry posting, the museum shall acquire title to the property.

• **Unsolicited Undocumented Property Left at a Museum after January 1, 2009**

Beginning January 1, 2009, a museum shall acquire the rights to undocumented property that is not solicited by the museum and that is delivered to the museum or left on the museum premises, if no one comes forward to establish ownership interest in it within 90 days of delivery of such property to the museum.

WHAT HAPPENS IF YOUR MUSEUM RECEIVES A CLAIM?

If a claim to property is received, the onus of proving the claim rests with the claimant. The museum will need to investigate the validity of the claim and the claimant will need to provide proof of ownership. If the museum agrees with the claim, it can simply arrange to turn the property over to the claimant.

If there are competing or disputed claims (whether it's between the museum and a claimant, or multiple heirs) a decision by judicial action may need to be made. We recommend you consult with an attorney if you have specific questions related to dealing with claimants.

FURTHER RESOURCES

American Association of Art Museum Directors. "Art Museums and the Identification and Restitution of Works Stolen by the Nazis", May

2007. http://www.aamd.org/papers/documents/Nazi-lootedart_clean_06_2007.pdf

American Association of Art Museum Directors. "Art Museums and the Practice of Deaccessioning." No date. <http://www.aamd.org/papers/>

American Association of Museums (AAM) Registrar's Committee, www.rcaam.org

DeAngelis, Ildiko P. "Ethical and Legal Issues: Old Loans." In *The New Museum Registration Methods*, Rebecca A. Buck and Jean Allman Gilmore, editors. Washington, D.C.: American Association of Museums, 1998.

Malaro, Marie C. *A Legal Primer on Managing Museum Collections*, 2nd edition. Washington D.C.: Smithsonian Institution Press, 1998.

National Park Service- Museum Handbook

<http://www.cr.nps.gov/museum/publications/handbook.html>

Society of American Archivists (SAA) Abandoned Property

Project, <http://www.archivists.org/saagroups/acq-app/abandoned.asp>

SAMPLE LANGUAGE FOR LETTERS AND NEWSPAPER NOTICES

UNCLAIMED LOAN: “NOTICE OF TERMINATION” (CERTIFIED LETTER)

The records of the _____ Museum indicate that you have or may have property on loan at [name of facility]. The museum is seeking to determine whether you wish:

- that the museum return the property to you
- that the property remain on loan to the museum subject to annual renewal [if the museum also wishes that the property remain on loan], or
- that the museum obtain all of your rights to the property, either to take the property into its collection or to dispose of the property, in its sole discretion.

Please contact [name of contact] in writing within one hundred twenty (120) days to advise the museum as to which of the above alternatives you wish to follow.

UNCLAIMED LOAN: SECOND WRITTEN NOTICE (CERTIFIED LETTER)

On [date of first notice], the [name of Museum] sent you a notice concerning property that, according to our records, has been lent to the [name of Museum]. You have not responded to that notice, a copy of which is enclosed, and the museum will commence proceedings to acquire title to the property if you do not contact [name of contact] in writing within one hundred twenty (120) days of receiving this second notice.

UNDOCUMENTED PROPERTY: NEWSPAPER NOTICE, “NOTICE OF INTENT TO ACQUIRE PROPERTY”

The notice must be titled “Notice of Intent to Acquire Property” and must include a statement containing substantially the following information:

“The [name of museum] hereby asserts its intent to acquire title to the following property: [brief description of property]. If you claim ownership to this property, you must contact the museum in writing to make arrangements to collect the property. If you fail to do so within one hundred eighty (180) days, the museum will commence proceedings to acquire title to the property. If you wish to commence legal proceedings to claim the property, you should consult an attorney.”

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