

CONSERVATION CENTER

for Art & Historic Artifacts

Legal Issues in Collections
Care: Abandoned Property



Conservation Center for Art & Historic Artifacts

In a typical year:

- Preservation Services specialists complete over 50 survey projects.
- Approximately 60 CCAHA-sponsored workshops, conferences, webinars, and training sessions are presented.
- The Digital Imaging Services staff digitizes thousands of pages of fragile archival documents, books, and photographs.
- Conservators assess and treat more than 6,000 individual artifacts, from over 400 clients.
- Housing & Framing Services house approx. 75% of the artifacts treated (folder, sleeve, box, mat and frame, or sealed package).





WISCONSIN
VETERANS
MUSEUM

Legal Issues in Collections Care: Abandoned Property

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- Registrar at the Wisconsin Veterans Museum (2012-present)
- Instructor for the Northern States Conservation Center's Museum Classes Online program (2013-present)
 - Legal Issues in Collection Management
 - Found in Collections: Orphans, Old Loans, and Abandoned Property
 - Databasing
- Kenosha Public Museum System, Harley-Davidson Museum, Rutherford B. Hayes Presidential Center (Registrar, Archivist, Collection Manager)
- MA in Public History with a certificate in Museum Studies from UW-Milwaukee and the Milwaukee Public Museum
- BA in Political Science with pre-law emphasis
- I'm NOT an Attorney



Abandoned Property

- Working through abandoned property can be one of the most challenging things museum professionals have to do
 - Lack of a clear and consistent definition of abandoned property
 - No federal laws pertaining to museums and abandoned property
 - Abandoned property law is handled at the state level
 - Many definitions
 - Not all states have abandoned property laws that pertain to museums
 - When states do have laws in place, they vary a great deal and can be complicated to understand



Abandoned property

“Abandoned property is defined as personal property left by an owner who intentionally relinquishes all rights to its control.”

see: https://www.law.cornell.edu/wex/abandoned_property

- At common law, a person who finds abandoned property may claim it but to do so, the finder must take definite steps to show their claim.
- Many jurisdictions have statutes that modify common law’s treatment of lost or abandoned property
- It can be difficult to distinguish whether property is lost, mislaid, or abandoned and this may need to be decided by a jury.
 - Courts will often look to the type of item and where it was found to determine whether the finder of the item has a right to the item. This is done to determine whether to grant possession to the finder of lost/mislaid/abandoned property.
 - In general, items which are abandoned or lost will go to the finder, unless the find is made at an owner-occupied residence. Mislaid items usually belong to the possessor of the place where the item is found. If an employee finds an item in the course of their employment, it belongs to the employer.
 - A finder is a bailee, with a duty to care for the found item.



Abandoned Property

- Old loans
- Unclaimed loans
- Found in Collection items
- Anonymous donations, drop-offs, and mail-ins
- Collections with incomplete paperwork

Old Loans

- An item or collection that the museum does NOT own
- Items with paperwork that lack recent contact between the owner and the museum
- Documentation indicates that the item(s) is a loan, but the owner can not be contacted
 - The owner may or may not be alive
 - The owner may still own the item(s) or ownership may have passed to someone else or even to the museum
- Items have been in a state of limbo for generations



Unclaimed Loans

- Loans with partial documentation
 - May indicate that the owner was contacted at some point, likely many years ago.
- Item or collection had a connection to a person at one point
 - Documentation may give a date and an address
 - Item(s) may be recorded by the museum as a loan, but no lender / owner is listed
- Incomplete documentation indicating that the item(s) were brought in as a potential donation or for use in an exhibit


Found in Collection items

- Unexpected items found during an inventory or other project
- Items not actively associated with a person or documentation
 - Paperwork may exist, however it is not linked to the FIC item
- Items never processed into the collections
- Often, these items have been at the museum for a long time and could predate all current staff, making them tricky to clean up



Anonymous donations, drop-offs, and mail-ins

- Items / donations that the museum did not seek out
- Donor purposely and with intent withholds their identity
- Items left outside the museum without contact information
- Items may or may not be wanted by the museum for the collections



Collections with incomplete paperwork

- There is paperwork, however:
 - Paperwork may not indicate purpose (donation, loan, copy, other)
 - Paperwork may be missing important information such as address, phone number, and/or email
 - Paperwork may be complete, but not legible
- Information listed on paperwork is not current
- Paperwork is not signed and dated
- Paperwork lists restrictions that can no longer be satisfied

Statutes of Limitations

See: Marie Malaro's "A Legal Primer on Managing Museum Collections", Chapter 7

- The specific time periods to bring claims to court, as provided in state laws, is called Statute of Limitations.
- Statute of Limitations serves to encourage claimants to act before evidence fades and witnesses die.
- Under the law of bailment, the cause of action is usually a lender demanding the return of an object and the borrower refusing to comply
- Museums can use statute of limitations to remove a lender's rights to an unclaimed item
 - The museum must trigger the statutes of limitations period
 - The goal of a museum should be to put the lender on notice that the museum intends to terminate the loan and to claim the loaned item as museum property if the lender fails to come and get it or arrange for its return.

Statutes of Limitations

- How can a museum trigger the statute of limitations period if the owner is unknown or can't be found?
 - Constructive notice approach (only when actual notice is not possible)
 - Date of Notice
 - Name of lender
 - Description of item
 - Date of the original loan
 - Name and address of the museum staff to contact
 - Statement that the museum is terminating the loan and will take title to the object if it is not claimed by a specific date

Published several times a week at repeated intervals in the county of the lender's last known address and the county where the museum is located.



Statute of Limitations

- If the lender fails to come forward by the deadline given in actual or constructive notice, the museum should immediately update the records to reflect ownership of the item as of that date
- Museum's title to the object could be subject to challenge in a claim brought to court by the lender or heirs up to the time the application limitations period for filing suit expires
 - Museum may want to maintain the item until the state's statute of limitations period expires.



Burden of Proof



- If you are involved in legal action, you must understand the term “burden of proof.” In a court case, the party with the burden of proof is the first one heard. This party has to have enough evidence to support his or her claim – a more difficult task.
- In the case of abandoned property, the burden of proof is usually on the person claiming ownership, who is claiming the museum has appropriated his or her property. They must prove that the museum, the long-term possessor of the property, is NOT its rightful owner.



Good Faith Effort

- Several states now have laws that make it easier for museums to deal with objects that are found in the collection without documentation and abandoned loans and in some states, there are laws that directly address abandoned loans or found property.
- If there are no state regulations that address these items, the principles of common law may be used to legally resolve the situation.
- Document everything
 - Steps taken to contact and notify the lender, including copies of any letters sent
 - Keep copies of the public postings, including dates
 - Dates of all activities
 - Names of museum staff members involved
 - Final resolution
- Sometimes, it may be best for a museum to maintain an item

Remember

- Do your best and document everything
- If you have access to an attorney, ask for help
 - It is ok if you do not fully understand your state property laws, you are a museum professional and probably do not have a law degree
- In general, you are only required to follow the abandoned property law for the state in which the museum is located
 - You do not need to try to follow abandoned property law for all the places the owner / lender may live (or lived previously)
- If you do not have a policy in place regarding abandoned property, work with museum staff to create one.



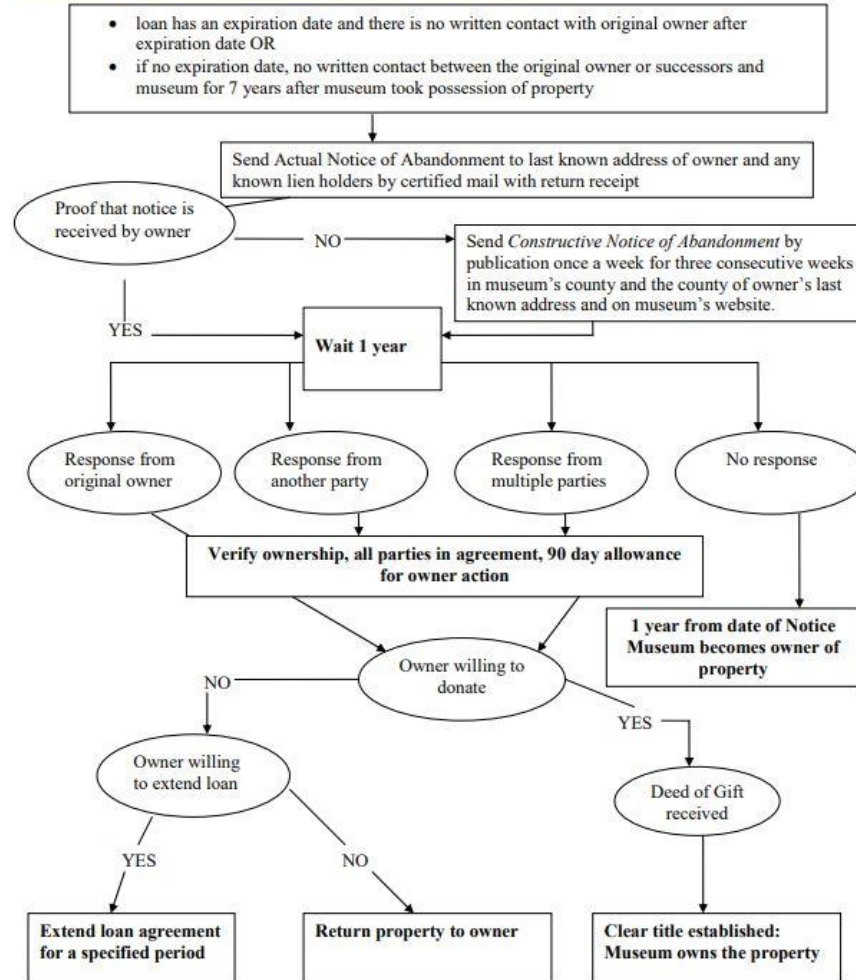
C. UNDOCUMENTED LONG-TERM LOANS

Some long term loans made to the Wisconsin Veterans Museum were created prior to its institution of a comprehensive cataloging and records system in 1970. These loans may have vague documentation and therefore require special return procedures and policies. Long term loans will be returned upon written application including:

1. Corroborative evidence of the original loan. Evidence may consist of entries in old collection inventories or catalogs, loan agreements or other written acknowledgement of loans to lender. Museum staff will cooperate with the claimant to attempt to verify the claim.
2. Claims not substantiated by documentary evidence will not be honored.
3. Claims substantiated will be returned to the original lender or heir who can demonstrate rightful ownership. A return receipt will be drawn up and signed by the receiver. The loan return receipt and supporting documentation will be kept with permanent museum records.
4. Wisconsin Abandoned Property Law, see State Statutes 171.32 and 171.33, provide procedures for the museum to acquire abandoned property free from all claims. If abandoned property procedures were followed prior to contact from the lender, objects are museum property and will only be returned at the Museum Director's discretion.
5. Claimants should be notified of their right to appeal and may take cases to the State Claims Board.

Illinois Museum Abandoned Property Law Flowchart for Unclaimed Loans

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2230&ChapterID=62>



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¹ The flowchart concept was based on the Illinois Museum Property Law Procedure for Unclaimed Loans

CONFIDENTIAL: Risk Assessment

Summary of Risk Score:

0-12 Low
13-16 Moderate-Low
17-20 Moderate
21-24 Moderate-High
25-28 High
29-32 Extremely High

To calculate risk at-a-glance:

- In the chart below, check the box that best describes the object type, clarity of title, value, and planned disposition method.
- Add the numbers from each section to assign a score.
- Compare the score to the risk categories.

Disposition

- 1 Internal transfer
- 2 gift to non-profit
- 3 Repatriate
- 4 Exchange
- 5 Sell at auction
- 6 Sell privately
- 7 Return to donor
- 8 Destroy

Object Type

- 1 Abundant
- 2 Mass produced (man-made)
- 3 Consumer produced
- 4 Limited edition, manufacturer
- 5 Limited edition, artist
- 6 Large series
- 7 Small series
- 8 Unique

Value \$_____ (if known)

- 1 \$1 - 1,000
- 2 \$1,001 - 5,000
- 3 \$5,001 - 10,000
- 4 \$10,001 - 50,000
- 5 \$50,001 - 100,000
- 6 \$100,001 - 500,000
- 7 \$500,001 - 1,000,000
- 8 \$1,000,000+

Clarity of Title

- 1 Signed deed/intent/bill of sale
- 2 Report to Trustees
- 3 Annual reports
- 4 Object and/or donor card file
- 5 Unclear documentation
- 6 Unsigned deed of gift
- 7 Accession number only
- 8 Undocumented/FIC

Resources

- AAM Museum Property Acts and Abandoned Loan Legislation
 - <https://www.aam-us.org/wire/arcsinfo/museum-property-acts-and-abandoned-loan-legislation/>
- Association of Registrars and Collections Specialist list of applicable laws by state:
 - <https://www.arcsinfo.org/content/documents/arcsmuseumpropertyandoldloanlegislationjune2018.pdf>
- Internet research of lenders and heirs of old loans (my favorites)
 - Ancestry.com
 - Findagrave.com
 - Newspapers.com
 - Radaris.com
 - Whitepages.com
 - Facebook
- Cornell Law school reference:
 - https://www.law.cornell.edu/wex/abandoned_property
- *A Legal Primer on Managing Museum Collections* by Marie C. Malaro and Ildiko Pogany DeAngelis

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Q&A